THE High Court OF JUSTICE, OR *CROMWELS* New Slaughter-House in ENGLAND.

With the Authority that Conſtituted, and Ordained it.

Arraigned, Convicted, and *Condemned,* FOR Uſurpation, Treaſon, Tyranny, Theft and Murther.

Being the Third Part of the *Hiſtory of INDEPENDENCY,* Written by the ſame Authour.

Printed *Anno Domini* 1660. In the ſecond Year of the States Liberty, and the Peoples Slavery.

Plin. Paneg. ad Trajanum.

Olim criminibus, jam legibus laboratur; & metuendum eſt, ne legibus fundata Reſpublica, ſit legibus everſa.

Iſaiah 59. verſ. 3, 4.

Your hands are defiled with blood, and your fingers with iniquity, your lips have ſpoken lyes, your tongues have muttered perverſneſs. None calleth for Juſtice, nor any pleadeth for truth; they truſt in vanity and ſpeak lies, they conceive Miſchief, and bring forth Iniquity.

Verſ. 7.

Their feet run to evil, and they make haſte to ſhed innocent blood; their thoughts are thoughts of iniquity, waſting and deſtruction are in their pathes. The way of peace they know not, and there is no judgement in their goings.

Verſ. 11.

We look for Judgement, but there is none; For Salvation, but it is far from us.

Verſ. 14.

Judgement is turned away backward, and Juſtice ſtandeth afar off; For truth is fallen in the ſtreets, and Equity cannot enter.

THat every thing is kept and maintained by the ſame wayes and means it was got and obtained, is a rule true both in Philoſophy and Policy. *Unumquo conſervat eodem mo quo fit.* And therefore Dominion gotten by fraud and force, muſt by fraud and force be preſerved. Things impiouſly got, muſt be impiouſly kept. When uſurped Tyranny layes its foundation in blood, the whole Superſtruction muſt be built with Mortar, tempered with blood. One ſin muſt defend and make good another. And hence ariſeth a Neceſſity upon Ambitious men to ſtanke and fortifie one Crime with another. But to plead this Neceſſity, which they have ſo wilfully drawn upon themſelves, in juſtification of their wicked Courſes. To expect ſubmiſſion, obedience, and an equal engagement from men uninterreſſed therein; and to entitle the Divine Providence and unrevealed Will of God thereto (in oppoſition to His Will revealed and declared in the Scriptures, as is now a dayes uſed) is to accuſe the Holy Ghoſt of our Sins, and an Hypocriſie ſo impudently ſinful and damnable, that I doubt no Age but this (the Dregs and Lees of time) ever gave an example of the like.

TO illuſtrate my firſt Maxime by ſome forreign Examples (before I lay the Baſtard at our own Doors) *Sylla* at *Rome*, by the power of the Sword, *proclaimed* (or voted) *himſelf Dictator, to make good which uſurpation with a Maſk of Authority, he compelled the Senate*, or *Parliament*) *to approve of all his forepaſſed*

Villanies, Murthers and illegal Acts, *and to confer a power upon him*; To kill whom he pleaſed and confiſcate their Eſtates; To build and deſtroy Cities; Diſpoſe Kingdomes; *And exerciſe an Arbitrary, Supreme Authority, and then (to eſtabliſh himſelf in his ſelf-created power) he poſted up at* Rome, *and in moſt Cities of* Italy, *Bills of Proſcription or Outlawry, containing the names of ſuch perſons, as (without any form of Law or Juſtice) he appointed to be ſlain* by his Souldiers. *Theſe Proſcribed men were (for the moſt part) ſuch as having ſome ſparks of* Roman *vertue in them, durſt love the antient Government, Laws and Liberties of* Rome, *and were therefore thought fit to be weeded out, as Malignants againſt his Innovations and arbitrary courſes.* Yet many mean ſpirited fellows, were proſcriſcribed and murdered, partly for confiſcation of their Eſtates, and partly to gratifie the malice and hatred of particular friends who (in that carnage) prayed in aid of *Sylla's* ſword to rid them of their Enemies.

After this *Auguſtus Cæſar* at *Rome*, having by terror of Arms made himſelf Conſul, and finding himſelf not ſtrong enough ſingly to ſubjugate his Country, he called *Antonius* and *Lepidus* to joyn with him, with whom entring into confederacy to ſubvert the fundamental Government, and uſurp the Supreme Authority; they divide that vaſt Empire between them, and *paſſed a Decree amongſt themſelves, that they ſhould be called the Triumvirate for Reforming and Re-eſtabliſhing the Commonwealth* (well enough before if they had let it alone) *with Supreme Authority* to give Eſtates and Offices to whom they thought fit, without asking the advice of Senate or people. They *appointed what Conſuls, Magiſtrates & officers they pleaſed*

They

They deſigned rich donatives, and 18 of the Chief Cities of *Italy* to be given to their Souldiers, if, by their valour they ſhould obtain victory over *Brutus* and *Caſſius*. *They fixed publick liſts or Tables of Proſcription, naming ſuch perſons as they expoſed to ſlaughter.* They proſcribed at one time 130 Senators, at another time 150 and 2000 Knights. *Whereby the beſt men for underſtanding, Conduct, Reſolution and Affection, beeng cut of,* the reſt (terrified by their example) became but *Terra Maledicta* (as Chymicks call it) dull liveleſs Aſhes or clods of Earth, without power or vertue to quicken them, or make them productive. After ſome revolutions, wherein *Auguſtus* and *Antonius* had diſcarded the dull and ſtupid *Lepidus*, and (at laſt) *Auguſtus* had ſubdued *Antonius*: *Auguſtus* uſurped the Title of *Tribune of the People*, whereby his Perſon became ſacred and inviolable; and (humouring the irrational Animals) took upon him the ſpecial Protection of that Britiſh Herd, the Raſcal Multitude, the Tribunes of the people having been originally inſtituted to Protect the people. His next ſtep was to make himſelf *Perpetual Dictator*, whereby he arrogated to himſelf a vaſt unlimited power above all Lawes. The Tribuneſhip was his Buckler. The Dictatroſhip was his Sword. And laſt of all (for Ornament only) *He having already full power of an abſolute Monarch (although he forbore the Title of (King) becauſe it was hateful to the people*, and againſt the Laws even ſince the *Regifugium*) he took upon him the Title of *Princeps Senatus*, or *Preſident of the Senate*; to keep a correſponding power over that great Counſel or Parliament: And finally uſurped the Title and Office of *Imperator* or *Generaliſſimo* of all Forces by Land and Sea, Garriſons, *&c.* *Phi-*

Philip King of *Spain*, Lord of the 17. Belgick Provinces, by several Titles, and under several limitations, Priviledges, Exemptions and Fundamental Laws, according to which he was to govern, and they to obey: Resolving to subvert the Fundamentall Lawes and Government, and reduce those 17. petty Signiories into one meer absolute Monarchy, sent the Duke *D'Alva* thither (a Warriour of a resolute stern nature) Governour, with a powerful Army; Who taking advantage of some rude Commotions formerly raised by the Protestants, in throwing down Images, and Sacrilegiously plundering Churches, *erected a New Tribunal Criminal, or (to speak in our modern uncouth Language) A High Court of Justice*, consisting of 12 Commissioners or Judges purposely chosen, most of them hangers by of the Law, of mean fortunes, practice, birth, and breeding; Covetous, Ambitious, and slavishly addicted to the Spanish Faction. To these was given by special Commission full Power and Authority to enquire into, and judge (or to hear and determine) the forepassed Commotions, whereupon *they stiled this Court*, Concilium Turbarum, *but the multitude called it* Concilium Sanguinis, *or the Bloody Conventicle*. This Councel or Inquisition did supersede or extinguish the Authority of all other Courts of Judicature, and make void all Laws, Constitutions, Jurisdictions, and Priviledges of the Nation, as to the aforesaid commotions, and all other causes they pleased to call High Treason. *They had no other bounds nor limits in their proceedings, than what they prefixed to themselves in certain Articles.* Some few whereof I will here present unto my Reader, because *they judged of High Treason by those Articles, not by the*

n novum regum vi armisque partum regere, atque iis Novis legibus domare & gubernare Belgium. Meteran. in anno 1567. Loidan in an. 1566. John Jaunces Pet. Thuanus.

the known Laws of the Land (a thing very observable and applicable to my purpose) so that they were not only Judges, Leges dicere, *but also Law-makers,* Leges dare: *as all Judges are who take upon them a liberty to observe no set forms of proceedings, but at their own pleasure.*

1. *Article.* All Petitions heretofore tendered to the States, or Cities Corporate against the erecting of new Episcopal Sees: or against the Holy Inquisition: or or requiring a Moderation of Decrees or Acts of State Parliament, are accounted meer conspiracies against God and the King.

Petitioning against Innovations in Government, and for the known Laws made Treason, the like

the Parliament practiseth against such as petitioned for peace by accommodation. And against our High Court of Justice, Arbitrary Imprisonments and Taxes.

2. *Art.* All Nobles, Gentry, Judges, Magistrates, and all others who connived at Heretical Sermons, plundering of Churches, and delivering such Petitions as aforesaid, pretending the necessity of the times, and did not resist and oppose them.

3. Art. *Whosoever affirms that all His Majesties Subjects of* Belgia *have not forfeited their ancient Priviledges, immunities and laws for Treason: and that it is not lawful for the King to use and handle them for the aforesaid Treasons as he pleaseth,* to prevent the like Treasons for the time to come, and that the King is not absolved thereby from all Oaths, Promises, Grants, Contracts and Obligations whatsoever.

We have forfeited our laws by conquest, or else our Grandees would not pass the two Acts for Treason, 14. *May* 17. *July,* 1648. nor erect the High

Court of Justice, and abolish our ancient lawes and government. See *Pol.* 3. *Of.* 1650. and the Case of the Kingdome stated.

Art. 4.

Compare this with the two Acts for New Treasons, 14. *May*, 17. *July*, 1649. and the Act 26 *March*, 1650. and Sir *John Gells* Case stated.

4. *Art. They that affirm this Councel or High Court of Justice exercise Tyranny in their Proceedings, or Judgements; and that they are not Supreme and competent Judges in all causes* Criminal and Civil.

Our High Court of Just. exceeds all this. See Sir *John Gells* Case stated, Printed *Aug.* 1650.

5. *Art. Those that in case of Heresie deny, that all manner of Informers and Witnesses of whatsoever Degree and condition they be, are to be credited:* and that upon the Testimony of any two witnesses, this High Court ought to proceed to Judgment, Execution, and Confiscation of life and goods, *without publishing the cause or charge, and without any legal form of Trial.* All these are guilty of High Treason against God and the King.

The Rigour, Cruelty, and Injustice of this New erected Counsel of Blood, or High Court of Justice, enforced the Low Countries to revolt and cast off the King of *Spain*.

LEt us now examine whether in some one little Province or Island belonging to that vast Roman Empire: and in some mean petty fellowes (Natives of that Island) men even at home of obscure Birth, Breeding, and Fortunes; we cannot finde examples of Ambition Usurpation, and Tyranny, as high and transcendent, as bloody and destructive, as covetous and greedy, as any of the fore-recited presidents: And (which is worst of all) carried on by those that call themselves Christians, nay Saints, (which is more than they vouchsafe to Saint *Peter* and

and the reſt of the Apoſtles, though glorified Saints in the Church Triumphant) and ſuch as in all their bloody, oppreſſing, cheating Deſigns (promoted by Perjury, Treachery, breach of Faith, Oaths, and publick Declarations) pretend to the ſingular favour, Providence and will of heaven, as confidently, as if they could ſhew Gods ſpecial Commiſſion, to warrant Uſurpation, Treaſon, Tyranny, and Thievery.

It is not unknown by what Artifices, frauds, falſified promiſes, Oaths, and Covenants, *a party of Antimonarchiſts, Schiſmaticks*, and *Anabaptiſts* lurking in the Parliament *fooled the people to contribute their blood and money towards the ſubduing of the King (and in him of themſelves)* and how by the ſame wayes and ſubtilties the ſaid party in the two Houſes (now combined openly, under the General Title of *Independents*) engaging and conſpiring with the Officers of the Army and Souldiery *expelled by armed force ſeven parts of eight of the Houſe of Commons*, leaving not above 43. or 44. of their own engaged party ſitting, men inriched with publick ſpoyls) and *voting under the power of the Armies Commanders, whoſe commands are now become a law to the ſaid ſitting Members, as their Votes are become Laws to the Kingdome.* In Obedience to their ſaid Maſters of the Army, The ſaid remainder of Commons voted down the Houſe of Lords (though an integral and principal Member of the Parliament of *England*, far antienter than the Houſe of Commons, and having a power of Judicature to adminiſter an Oath (which the Houſe of Commons never had, nor pretended to have, until this time that they overflow their Bounds, and the whole Kingdomes, under the protection of their Army) which prerogative of the

House of Lords is clearly demonstrated by the House of Commons standing bare before them at all conferences, as the Grand Inquest doth before the Judges) because they rejected the Ordinance for Trial of the King. And *now these Dregs and Lees of the House of Commons, take upon them to be a compleat Parliament:* To enact and repeal Statutes; To subvert the Fundamental Government, Laws and Liberties of the Land; To pull up by the Roots without Legal proceedings) every mans private property and possession, and destroy his life: To burden the people with unsupportable, unheard of, unparliamentary Taxes, Impositions, Excise, Freequarter, buying of New Arms after the Countrey have been disarmed of their old Arms three times in one year; Pressings and Leavying of Souldiers, Sequestrations, Plundering of Houses and Horse, and many other oppressions, more than the *Turke*, *Russe*, or *Tartar* ever heard of: of all which our *Grandees are free*, and lay them upon others as partially as they please, purposely to consume them. To make Religion but a stalking horse to their Designs, and the Ministers thereof but Hostlers to rub down, curry, and dress it for their riding; to whom they send Commands, what they

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s for redress slighted. N stands for a Neuter, he is more indifferently rated, and upon hewn, may chance to be relieved. The letter P. signifies a perfect Parliamentarian. He vourably taxed, as he bears an inconsiderable part of the burden, and that they may the consume with Taxes and want, all such as do not concur with them in the height of illanies. The pretended Parliament, are now debating to raise the Monethly Tax to o lib. or to deprive every man of the third part of his Estate, both Real and Personal, intenance of their immortal Wars, and short lived Commonwealth. Besides Excise, Cu-, Tonnage and Poundage, Freequarter, finding Arms and Horses, and the sale of Corpo-Lands now in agitation. Whilest our Grandees enrich all the Banks of Christendome ast summes raised by publick Theft and Rapines.

shall,

ſhall, and ſhall not preach to the people; as if preaching were the Ordinance of man, not of God. At laſt by way of preparative to their machinations, they paſs theſe following Votes.

1. *That all Supreme power is in the people.*

2. *That the Supreme Authority under them, is in the peoples Repreſentatives, or delegates in Parliament aſſembled.* Meaning themſelves (you may be ſure) the Quinteſſence and Elixar of the Houſe of Commons, extracted by thoſe learned Chimcks, Doctour *Fairfax*, Doctour *Cromwel*, and the reſt, graduated at that degraded Univerſity of *Oxford*. Here note they voted the Supreme power to be in the people, that they might uſe thoſe Gulles as Conduit pipes or Trunks to convey the Supreme Authority into themſelves, the better to enſlave the people; And *tickle them, whileſt they faſten about their necks the Iron yoke of a Military Oligarchy, wearing the Maſk of a perpetual Parliament.*

3. *That whatſoever the Commons in Parliament ſhall enact, ſhall have the power and force of an Act of Parliament, or Law, without the conſent of the Houſe of Lords, or the Kings Royal Aſſent; any ſtatute, law cuſtome or uſage to the contrary notwithſtanding* (they might have ſaid all our ſtatutes, laws, cuſtomes, *&c.* notwithſtanding) This one vote hath more of *Diſſolution* and more of *Uſurpation* and *Innovation* in it, than any I yet ever read of; *This is univerſally Arbitrary, and layes the Ax to the root of all our Laws, Liberties, Lives, and properties at once.*

What theſe men will, they vote:
What they vote is Law.
Therefore what they will is Law.

4. *That to wage war, or to bear Arms againſt the Repreſentative body of the People, or Parliament is high Treaſon.* By the Law all Treaſons are committed againſt the King, his Crown and Dignity.

5. *That the King hath taken up Arms againſt this Parliament, and is therefore guilty of all the blood ſhed this War, and ſhould expiate thoſe crimes with his blood.* If the King were not guilty, theſe men are; And therefore they paſſed this Vote, *Se defendendo.* Yet obſerve that herein they became Judges in their own cauſe, and forejudged his Majeſty before his Trial, if that may be called a Trial, that was carried on by men, who were both Accuſers, Proſecuters, parties and Judges; and had neither Law, preſident, formality of proceedings, nor any other foundation of Juſtice or Reaſon to warrant them, nor were delegated by any lawful Authority?

Theſe Votes thus paſſed, and by this kinde of men, were the foundation upon which they built their great Engine to deſtroy the King and Kingly Government together with the Religion, Laws, Liberties, Lives, and properties of the people; all condemned in that deadly ſentence given againſt the King) For having (as aforeſaid) created (by their own Votes) themſelves as abſolute a power as they pleaſed and caſt the people and all they have into that bottomleſs Chaos of their Arbitrary Domination: They erect an Extrajudicial, unpreſidented High Court of Juſtice to Try (or rather to condemn without Trial) the King, conſiſting of 150. Commiſſioners, Souldiers, Parliament men, Trades men; the moſt violent, engaged and factious incendiaries of all the Antimonarchical faction: Amongſt whom were many low con-

conditioned Mechanicks, and Banquerouts, whose Fortunes are since repaired out of the Kings Estate, and other publick Lands, Goods, and Offices, as a reward for that Royal Blood they spilt. The King the Fountain of Law, Justice, Mercy, Honour, War, and Peace; the Head of the Parliament, and Supreme Governour over all persons, and in all causes) thus violently removed; presently (as if the Mounds and banks of the Sea had been overturned) an impetuous inundation of bloody, thievish Tyranny and Oppression brake in upon us: So that no man can call his life, liberty, house, lands, goods, or any other his Rights, or Franchises his own, longer than the gracious aspect of some of our Grandees shine favourably upon him.

See Stat. Recognition 1 *Jac.* The Oaths of Allegiance, Obedience and Supremacy, and all our Law-books.

In the next place: contrary to their own Declarations of the 9. *Feb.* and 17. *March* 1648. Wherein they promise that in all things concerning the lives, liberties, and properties of the people, they will observe the known laws of the Land, with all things incident thereto) *They pass misbegotten Acts of Parliament, one of the* 14. *of* May, *another of the* 17. *of* July, 1649. *whereby* (in derogation and annihilation of that excellent Stat. 25 *Ed.* 3. Chap. 2. Ascertaining Treasons, and reducing them to a small number, and leaving nothing to the interpretation of the Judges, that the people might not be ensnared) *they exceeding by multiplying Treasons, bringing bare words as well as deeds within the compass of that offence: and making many duties to which the laws of God & the land, the Protestation & Covenant, the oaths of allegiance, obedience, & supremacy oblige us, to be high treason, & these new acts of treason penned in obscure, ambiguous terms, purposely to leave a latitude,*

This Stat. *Ed.* 3. c. 2. S *Johns* again *Strafford*, c the security the people And the St 1 *Hen.* 4. c 10. *Ed.* 6. cap. 12. 1 *Mariæ* 1. tific and h ly comme

tude of Interpretation in (their own creatures) the Judges, that the People may be ensnared.

The King thus taken out of their way. They passe pretended Acts. 1. *To Disinherit his Children.* 2. *To abolish Kingly Government for ever.* 3. *To convert our ancient well-tempered Monarchy into that* (which they call a *Common-wealth, or Free-State*; although nothing be therein free but their lusts: nor hath it any form or face of Civil and just Government; wherein a confused Multitude rule by their own Wills, without Law: and for their own benefit; no consideration being had of the good and happinesse of the people in general. 4. *They Constitute a Senate, or Councel of State of* 40 *men* (amongst which some Trades-men, Souldiers, illiterate Lawyers, Parliament-Members, men already engaged over head and eares in sin, therefore to be confided in) to these or any nine of these they entrust the Administration of this Utopian Common-wealth, and these they would have us believe (without telling us so) are the Keepers (or Gaolers) of the Liberties of *England.*

These things being but Introductions to the Usurpation of these Kinglings: and having been already shewed to the world by many pens. I content my self to give a cursory view of them, and haste to my intended task, to shew that this Usurped power is kept and administred by as wicked and violent policies, as it was gotten by.

The first endeavour of all Tyrannical Usurpers is, To lessen the number of their Enemies; either by flaftering

They have onverted our ncient Monarchy into Free-state; nd tell us ey are the ate. They ll us they ve bestow- Liberty pon the peo- e: but they d their sa- on onely e the peo- e. All the t of the glish Nati- are anni- ated, and uced to hing, that se fellows y become things: erciphers, ing onely ake them ore ac- t. And gross sal- must not isputed st, lest New of Par- nt call eason.

flattering and deceiving them: or by violently extirpating and rooting them out. And such have been the attempts of our new *Cromwellian* Statists, ever since (without any calling from God or the people) they took upon them the Supreme Authority of the Nation; subverted our well-mixed Monarchy, and created themselves a Free-State

1. They endeavoured to sweeten and allure to act with them, as many of the Secured and Secluded Members, Ministers, and other Presbyterians, as they could, to the end that *ex post facto* being guilty of their sins, they might be engaged in one common defence, and go halfs with them in their ignominy and punishment, though not in their power, profit, and preferments, in which the Godly will admit no Rivals, but (like their Patron the Devil) cry all's mine. But this Design failed for the most part. 1. A Collusive Accommodation.

2. Their second Endeavour was how to diminish the number of their Opposites, Royalists and Presbyterians, by a Massacre, for which purpose many Dark Lanthorns and Poniards were provided last Winter, 1649. But fame prevented this plot: which coming to be the common rumour of the Town, put them in mind of the danger, infamy, and hatred that would overwhelm them. So this was laid aside. 2. An intended Massacre.

At last they invented two other Engins, no less bloody then, and as effectual as a Massacre.

3. The Engagement is the first of these two Gins) which all persons are enjoyned to subscribe by their Act 2 *Jan.* 1649. *To be true to the Common-wealth of* England, *as it is now established, without a King, or House of Peeres.* And this is obtruded under no lesse penalty, than, To be totally deprived of all Benefit 3. The Engagement.

Benefit of Law whatſoever. Now the Lawes of the Land being the only Conſervators of our Lives, Liberties and Eſtates (without which Lawes all men have a like property to all things, and the ſtrongeſt have right to all is poſſeſt by the weaker; ſince the Law onely diſtinguiſheth *Meum* and *Tuum*) what is this but to expoſe the Liberties of the Non-Engagers to falſe Impriſonments; our Eſtates to rapine, ſpoil, and injuſtice: and our Lives and Perſons to wounds and murders, at the will and pleaſure of ſuch as will engage with our Uſurpers: but eſpecially at the pleaſure of their own Souldiers: to whom (I conceive) this Outlawry was intended as an Alarm or Invitation to plunder and maſſacre the Non-Engagers, and to pay themſelves their Arreares of which theſe Parliamennt men have couſened them) out of their Eſtates, and though the Souldiers were not ſo wicked as their Maſters, yet we daily ſee many good Families in *England* deſpoiled of their Eſtates, for want of protection of the Lawes, brought to miſerable beggery, rather than they will wrong their conſciences by ſubſcribing this damnable Engagement contrary to the Proteſtation and Covenant impoſed by this Parliament, contrary to the known Law of this Land, which this Parliament hath declared to obſerve and keep in all things concerning the lives, liberties, and properties of the people, with all things incident thereto; contrary to this Parliaments reiterated Votes, that they would not change the Ancient Government, by a King, Lords and Commons. And contrary to the Oathes of Allegiance, Obedience, and Supremacy: whereby (and by the Stat. of Recognition, 1 *Jac.*) our *Allegiance* is tied onely to

to the *King*, his *Heirs* and *lawful Succeſſors*; from which no power on earth can abſolve us, and ſo much we atteſt in the Oath of Supremacy. *Politicus* (Interpreter to our new State-puppet play) *Numb.*19. from *Sept.*19. to *Sept.*26. out of the dictates of his Maſters tells us, that in Anſwer to the Kings Act of oblivion granted, the Parliament intends to paſs an Act of General pardon; for which they expect in future a General obedience and ſubmiſſion to the Government (you ſee though they will not be the Kings ſubjects, they will be his Apes) and in the beginning of the ſaid Pamphlet, *Politicus* ſaith, That Protection implies obedience, otherwiſe they may be handled as publick Enemies and Out-laws, and ought to be deſtroyed as Traitors. Here you have the end to which this general pardon is intended; it is but a ſhooing-horn to draw on the utmoſt penalty upon Non-engagers, appointed by the ſaid pretended Act 2. *Jan.* 1649. to weed them out of this good Land, that the Saints only may enjoy the earth and the fulneſs thereof; to which purpoſe all their new coyned Acts and Laws are directed. The Scripture points forth theſe kind of men, when it ſaith, *The Mercies of the wicked are cruel.* The ſum of all is, If we will not acknowledge Allegiance to theſe Muſhromes, we ſhall be Traitors without Allegiance (a Treaſon never yet heard of in any Law) If we will acknowledge Allegiance, we put our ſelves in a capacity to be Traitors, when they ſhall pleaſe to make us ſuch. But let them know, That we are all Engliſhmen, Free-born alike, under the protection of an ancient, legal Monarchy, to which we owe Allegeance; and how we come to forfeit that legal Protection, our ſetled Laws

and Government; and be ſubjected to a New, unknown protection obtruded upon us by a company of upſtarts (Muſhromes of Majeſty, ſo mean in birth and breeding (for the moſt part) that the place of a Conſtable equalls the higheſt of their education) impoſing what Laws and conditions upon us they pleaſe; I would be glad to hear without being hindred by Guns, Drums, High Courts of Juſtice, and other Inſtruments of Violence and Murther. But the greateſt Myſtery in this cheat is, That our Self-created Supremiſts, having voted the original power to be in the people, and but a derivative Authority to be in themſelves as the Repreſentative of the people, ſhould notwithſtanding ſo yoak their Sovereign Lord the people, and make them pay Allegiance to their own Delegates (the eighth part of a Houſe of Commons) under the penalty unleſs they ſubſcribe as the far major part have not) of out-lawing and depriving all the people of this Land of all benefit of the Laws they were born to; and conſequently of annihilating and making them no longer a Nation or people. As if they were meer Salvages, newly conquered, collected and formed into a politick body or Commonwealth, and endowed with Laws newly invented by the Novice Statiſts. But the unlawfulneſs of the ſaid Engagement with the Injuſtice of the Self-created power that obtrudeth it hath been handled by many good pens, eſpecially by the *Cheſhire* and *Lancaſhire* Miniſters in their plea for Non-ſubſcribers. Therefore I paſs on to my principal ſcope; *The ſecond Engine appointed to root out all ſuch as are of a different party, the High Court of Juſtice.* A formidable Monſter, upon which no pen (that I know of) hath yet adventured.

4. In

4. In treating of the High Court of Justice, I must consider, 1. *By what persons and Authority* this new erected unpresidented Court is constituted? 2. *Of what persons it is constituted?* 3. *The way and manner of their proceedings?* What Formalities and Laws they observe therein? How suitable to the known Laws of the Land, and the Parliaments Declarations, Protestations and Covenant they are? 4. *To what end this Court is constituted?* 4. The High Court of Justice.

1. *The Persons constituting* this extrajudicial Court are the present pretended Parliament, consisting of forty or fifty thriving Commons only, who conspired with *Cromwel* and the Army to expel seven parts of eighth of their Fellow-Members, without any cause shewn, abolished the House of Peers, erected this High Court of Justice (*in nature of a Court Martial*) to murther the King, abolished Kingly Government, turned it into a thing they call a *Free State*, disinherited the Royal Family, *and now usurp to themselves (without any calling from God or the People) more than a Regal, Legal or Parliamentary Authority*, wherewith they have subverted the Fundamental Government, Religion, Laws, Liberties and Property of the Nation, and envassalliſed and enslaved them to their Arbitrary Domination; the Authority by which they erect this extrajudicial Court is, *The usurped, Legislative power*; by colour of which they passed an Act dated 26. *March* 1650. establishing the said High Court of Justice. *Yet their own creature Master* St. Johns, *in his Argument against the E. of* Strafford (in a Book called Speeches and Passages of this great and happy Parliament, printed by *William Cooke*, 1641. pag. 24.) saith, *The Parliament is the Representative of the whole King-*

dome, wherein the King as head, The Lords are the more Noble, and the Commons the other Members, are knit together as one body politick; The Laws are the Arteries and Ligaments that hold the body together. (And a little after) *Its Treaſon to embeſel a Judicial Record,* Strafford *ſwept them all away. Its Treaſon to counterfeit a* 20 s. *peece;* here is a counterfeiting of Law (ſo in theſe counterfeit new Acts) we can call neither the counterfeit nor true one our own. *Its treaſon to counterfeit the great Seal for an acre of land,* no property hereby is left to any land at all (no more is there by the votes and practiſe of our new Supremiſts (thus far Mr. St. Johns.) *But that the Parliament doth neceſſarily conſiſt of the King and the two Houſes aſſembled by his Writ, & can paſs no Act without their joint conſent.* See the preambles of all our Statutes, all our Parliament Records, all our Law books, *Modus tenendi Parliamentum. Hackwels* manner of paſſing Bills. Sir Tho. Smith *de Repub. Anglorum. Cambdeni Britania.* All our Hiſtorians, Politicians, and the uninterrupted practiſe of all Ages. That it is now, lately otherwiſe practiſed, is not by any Law of the Land, but by the will of lawleſs power and Rebellion, that hath cancelled all our Laws, Liberties and Properties, and ſubverted our Fundamental Government, and disfranchiſed and diſinherited the whole Nation. Yet Maſter St. *Johns* in his ſaid Argument againſt *Strafford*, pag. 38. was then of opinion, *That to ſubvert the Laws and Government, and make a Kingdome no Kingdome, was Treaſon at the Common Law.* This Act 26. *Mar.* 1650. is a new modelled Commiſſion of Oyer and Terminer; and all the people of the Land, are by the conſequence thereof disfranchiſed and proſcribed. The illegality and tyranny

ranny thereof, they have introduced, who in this Parliament ſo zealoully complained againſt the Court of the Preſident and Counſel of *York*, or of the North, as an intollerable grievance (notwithſtanding it had been of as long continuance as from 41 *H.* 8.) as appeares by a worthy *Members Speech or Argument againſt it* (in the ſaid Book of Speeches and Paſſages p. 409. *made by order of the Houſe of Commons in* April 1649. I find not one Exception there made againſt the Court of *York*, to which this upſtart High Court is not more liable than it. 1. The Commiſſioners of this High Court are not appointed *to enquire, per Sacramentum proborum & legalium hominum*, that is, by Juries; as by *Magna Charta*, and above 30. Statutes confirming it, all Commiſſions ought to run. 2. They are not appointed (nor ſworn) *to hear and determine, Secundùm Leges Angliæ*, according to the known Laws (as they ought to be) but according to certain Articles and powers given in the ſaid Act 26. *March*, 1650. 3. The ſaid Act 26 *March* leaves a dangerous latude to the interpretation and diſcretion of the Commiſſioners (contrary to what is done in the Act 25 *Edw.* 3. chap. 2.) namely; It hath *one Clauſe enabling them to inflict upon Offenders ſuch puniſhment, either by death or otherwiſe corporally, as the ſaid Commiſſioners, or the major part of them preſent ſhall judge to appertain to Juſtice.* This leaves it in the breſts of the Commiſſioners (without any Law or rule to walk by) to inflict what torments and ignominious puniſhments they pleaſe, although not uſed in our Nation; and *arbitrary corporal pains are proper to ſlaves, not to ſubjects.* Here (after the loſs of all but their bodies) the people may ſee their bodies ſubject to the lawleſs wills of

our Grandees. And by another clauſe, this Act impowereth the Commiſſioners. *To examine witneſſes upon oath, or otherwiſe, if need be.* This word (*or otherwiſe*, &c.) gives them power to examine witneſſes without oath (if they cannot procure witneſſes ſo far the ſons of Belial, and cauteriſed in conſcience as to adventure upon an oath) even iu caſe of life and death, and mutilation of members; contrary to the current of all our Lawes, and practiſe of all our Courts of Law, and of all Nations. See *Stat.* 1 *Edw.* VI. chap. 12. 5 *Edw.* VI. chap. 11. *Cooks* 3. Inſt. p. .24,25,26. *Dent.* 17.6. *Ex ore duorum vel trium peribit qui occidetur.* Deut. 17.6. Matth. 18.16. John 18.23. 2 Cor. 13. 1. Heb. 10.28. This is the moſt arbitrary and deſtroying liberty that ever was given to Judges; And ſuch as none but profeſſed thieves and murderers will accept or make uſe of. The Scripture ſaith, *An oath is the end of controverſy between man and man. How then can they end and determine a controverſie without oath?* But the end of all controverſies before this Butcherrow of Judges, is cutting of throats., and confiſcation of eſtates. And by the ſame clauſe of the ſaid Act (*To examine witneſſes*) *they may, and* (*I hear*) *do examine witneſſes clandeſtinely*, and proceed upon bare Depoſitions read in Court, whereas they ought to produce the witneſſes face to face in open Court, and there ſwear them, that the party accuſed may interrogate them, and examine the circumſtances, and whether they contradict themſelves, or one another, for clearing the Evidence? And whether they be lawful witneſſes or no? Nay (I hear) they do privately ſuborn and engage witneſſes without oath. And then produce them

e Stat. 5 *Ed.* chap. 11. & *oks* 2. Inſt. g. 26.

to

to ſwear what they have formerly related only: and if they ſcruple at an oath; puniſh them for miſ-informing the State. 4. That I may make ſome more uſe of the aforeſaid Members words, *Whether the King, or a prevailing Party uſurping his Kingly power, may canton out a part of his Kingdom (or cull and mark out for ſlaughter ſome principal men, and deny them the benefit of Law, in order thereto, as theſe Judges do) to be tried by ſpecial Commiſſion, ſince the whole Kingdom is under the known laws and Courts eſtabliſhed at Weſtminſter?* It ſhould ſeem by this Parliaments eager complaint againſt the ſpecial Commiſſion of *York*, this Parliament hath determined this queſtion in the negative already (whatſoever their preſent practiſe to carry on their Deſign is) See Stat. 17. *Car.* 1. againſt the Star-Chamber. To what purpoſe ſerve thoſe Statutes of *Magna Charta*, and the *Petition of Right*, if men may be fined and impriſoned (nay murdered) without Law, according to the diſcretion of Commiſſioners? This diſcretion is the quick-ſand that hath ſwallowed our Properties & Liberties (but is now ready to ſwallow our carkaſſes.) Thus far that Gentleman, Whoſe words then carried the Parliamentary ſtamp upon them. Let me add ſome more exceptions of my own againſt this High Court of Injuſtice. 5 *Souldiers of the Army are appointed by the Act* 26 March, *to be aſſiſtant to the Commiſſioners*, contrary to the peaceable proceedings of the Law, which never makes uſe of any but Civil Magiſtrates and Officers of the Law. See Stat. 7 *Ed.* I. 2 *Ed.* III. chap. 3. 7. *R.* 2. chap. 13. 6. *And contrary to the old oath which all Judges ought to take, in theſe words.* You ſhall ſwear *well and faithfully to ſerve the King and people*, in the Office of Juſtice, &c. And

And *that to what estate and condition they be come before you in the Sessions with force and arms, against the peace, against the Statute thereof made, to disturb the Execution of the Common Laws, or to menace the people, that you arrest their bodies, &c.* Stat. 18 *Ed.* 3. in An. Dom. 1344. p. 144. Poultons Book of Stat. at large. *But the oath appointed for these Commissioners to take, is not penned in terms of indifferency, nor doth any waies oblige them to the people,* 26. Mar. 1550. (viz.) *You shall swear well and truly according to the best of your skill and knowledge, to execute the several powers given you by this Act* (not well and lawfully to serve the people.) Besides, they swear to execute the several powers given (*not to do Justice according to the Laws.* Now the Laws are the only rules of Justice, by which we distinguish crooked from strait, true from false, right from wrong. This is not the work these Judges are packed for, but to *execute* Acts of *power* and *will.* But powers are often usurped, tyrannical, illegal and unjust: So are these. *Injuria est quod contra legem fit.* 7. How can the House of Commons (if it were full and free) constitute a new unpresidented Court of Justice, nominate and ordain Judges, and enable them to administer Oaths, having never had, nor so much as pretended to have any power to judge, to nominate Judges, or to administer an Oath; as having never been more than the Grand Enquest of the Kingdom, humbly to present to His Majesty in a petitionary way, the grievances of the people? *Nemo dat quod non habet.* 8. Suppose the House of Commons had power of Judicature, delegated to them from the people as their Representative? *Delegati non possunt substituere Delegatos, & Professatam sibi concreditam, in alios transferre.*

Delegates

legates cannot make ſubdelegates, and transfer their truſt to others. See Col. *Andrews* 3. Anſwers given into this High Court, for his defence. Printed at the latter end hereof.

2. My ſecond conſideration will be, *Of what Perſons delegated or Commiſſioned, this Court conſiſteth?* The pretended Act. 26. *March* 1650. names 25. Commiſſioners, all which (for their better credit) it enacteth Eſquires, amongſt whom are 4. or 5. that have profeſſed the Law, (as farre as wearing a Lawyers Gown comes to) but were better known by their leiſure then by their Law; untill by adhering to our prevailing Schiſmaticks, in ſubverting our Laws, they ſeem to be eminent Lawyers. Of *Keeble* ſee the Triall of L. Collonel *John Lilburn*, firſt and ſecond Part. *Steel* cited expired Statutes at *Wincheſter* againſt Captain *Burley*. The reſt are (for the moſt part) poor ignorant Trades men, ſome ſo young they are but lately out of their Apprentiſhips, others Broken Trades-men that have compounded with their Creditors, ſome of vild and baſe profeſſions; One or two of theſe Wolviſh Saints (I hear) have with ſome difficulty eſcaped the Gallowes for Man-ſlaying: *William Wibeard* Eſquier is a Rope-ſeller: this employment may happily help him to the Hangmans Cuſtom. *William Pemoier* Eſquire was heretofore an Ape-carrier, Cherry-lickom or Mountredinctido. *Cook* a Vintner at the Bear at the Bridge-foot, he keeps a vaulting-School for our ſanctified Grandees, and their Ladies of the Game. If the Houſe of Commons had power to make Judges (which I have diſproved) yet, *Ex quovis ligno non fit Mercurius.* They muſt name ſuch Perſons as may be competent Judges. And therefore

must not chooſe: 1. Ignorant men. 2. Nor ſuch as the Law calls, *Viles Perſonas*, men baſe or contemptible for their Perſons or Sordide callings; Mechanicks of the loweſt rank. 3. Perſons of Scandalous life and converſations. 4. Not Banquerouts and Indigent Perſons. *Neceſſitas cogit ad turpia.* 5. Not partiall and preingaged Perſons, choſen to ſuppreſſe another party. As theſe Commiſſioners are engaged to the preſent power to ſuppreſſe all others. 6. Nor *ſuch as Schiſmatically or Heretically affected, are ſeaſoned with ſuch Doctrines and Principles, as neither agree with the Duties of a good Chriſtian, a good Common-wealths man, nor a good Judge.* Which two laſt Objections not only theſe Commiſſioners, but the pretended Parliament that commiſſioned them are apparently guilty of, as being all of the Independent Faction conſpiring to rob and rout out all other Parties: Royalliſts, Presbyterians and Levellers: For which purpoſe this New Tribunall or Inquiſition is ſet up. *Independency being a meer complication and Syncretiſmus, or rather a Sink and Common Sewer of all Errours, Hereſies, Blaſphemies, and Schiſmes, (though they peeviſhly differ in ſome inconſiderable Tenents) yet having one Generall End or ſcope at which they all chiefly aime* (viz.) *power, preferment, profit, and the ſuppreſſion of the Truth and Magiſtracy, they have likewiſe ſome common principles to ſoader them together, which they uſe as a Meanes conducing to that Generall End.* Some few whereof I will here ſet down for my Readers ſatisfaction. 1. *To tollerate no King nor Magiſtrate Superior to themſelves*, as Being a Tyranny or Bondage over the Chriſtian Liberty of the Saints and Kingdom of Chriſt. Becauſe they know no Chriſtian Magiſtrate can tollerate them, being (by the *Genius* of their Sect) enemies

enemies to all Civil Societies, whether Monarchicall, Ariſtocraticall, Democraticall or Mixed; as the Kingdom of England was before theſe men deſtroyed it. Beſides their common Doctrine, *That they are appointed to break the powers of the Earth to pieces, To levell the hils and fill up the vallies, That they are called, To bruiſe the Nations with a rod of Iron, and break them in pieces like a Potters veſſell:* Which they have done in *England*, and threaten the like in *France*, *Germany*, &c. whereof, their Pulpits and diſcourſes ſound. Obſerve *their Practiſes in the Low Countries.* Where having by their ſpies and Emiſſaries, found out ſome Burgers of the ſame humour with themſelves; They propagated their Doctrine ſo far; as to endeavour to ſtrike the Ariſtocraticall Members out of that Common-wealth by abetting ſome of the States Provinciall to leſſen (and ſo to aboliſh by degrees) The Lords States Generall (the Optimates of that State) To ruine the Prince of *Orange*, to whoſe Family they owe their Liberty; *To diſſolve the Generall Union of the ſaid United Provinces, and ſo take in pieces the whole Frame of that Republick.* To ſay nothing of their Inſolencies in fighting and killing their men, becauſe the Belgike Lion will not ſtrike ſaile to their Croſſe and Harpe; and in blowing up the Antelope in Helverſluce: Which ſhews what good Neighbours *Holland*, and other Parts, are like to have of the New State of *England* and *Ireland* (when they have made themſelves intire by the purchaſe of *Scotland*) that is born (like our Engliſh *Richard* III.) with Teeth in its head; and ſnappeth at its Neighbours before it be out of its Swadling clouts. This is the cauſe that *Cromwell*, before he ſet ſaile for *Ireland*, cauſed his Journey-

men, the pretended Parliament. To passe an Act for Tolleration of all Errors, Heresies and Schismes, under the Notion of Liberty of Conscience, and Ease for Tender Consciences. 2. Their second Principle is, *That the Good things of this World belong onely to the Saints (that is, Themselves) all others being usurpers thereof: and therefore they may rob, plunder, sequester, extort, cheat and confiscate (by illegal Laws of their own making, by extrajudicial Courts and partial Judges of their own constituting) other mens goods and estates, upon as good Title as the Jews spoyled the Egyptians, or expelled the Canaanites.* 3. Their third Principle, *That the Spirit (which sanctifies and illuminates these men) in every particular man blowes when and where it will, sometimes this way, sometimes that way, often contrary waies: And therefore they can make no profession of any certain Rule of Doctrine or Discipline, because they know not which way the Spirit will inspire.* For this reason they are still pulling down old and setting up New Doctrines, as the *Nomades* do cottages, onely constant in unconstancy. They professe their consciences are the Rule and Symboll both of their Faith and Doctrine, by this Leaden Lesbian Rule they interpret, and to this they conform the Scriptures; not their Consciences to the Scriptures; setting the Sun-Dyall by the clock; not the clock by the Sun-Dyall. That every man must pray according to the Dictates of his Private Spirit; They reject the Lords Prayer, for fear of quenching the Spirit. *When they break their Faith, Articles, Promises, Declarations and Covenant; they Alleage, the Spirit is the Author thereof.* When *Cromwell* (contrary to his vowes and Protestations made to the King) kept him close Prisoner in Carisbrook Castle; He affirmed *the Spirit would not let him keep his word.* When, contrary

contrary to the Publick Faith, they Murdered Him: they pretended: *They could not resist the Motions of the Spirit. Sua cuique Deus fit dira libido.* This Hobgoblin serves all turnes. 4. Their fourth Principle is, *That they may commit any sin, and retain their Sanctity in the very Act of sinning: For what is sinfull in other men, is not so in the Saints; who may commit any crime against the Law of God, and yet it cannot be imputed to them for sin;* Because they know in their Consciences what they do. So tender and delicate are their Consciences, That *they are capable of any Offence against their Neighbour, without breach of Justice or Charity.* A righteous man is a Law to himself. 5. Their fift Principle is, *That 7. make a Church: although men, women and children, and that this Church is Independent upon any other.* The *Anabaptists* (though they neither professe to follow *Paul* nor *Cephas*) yet declare themselves to be some of *Cromwells* Church, some of *John Goodwins*, some of *Kiffins*, some of *Patiences*, and some of *Carters* Church. 6. Their sixt Independent Principle is. *That if a man be questioned for any crime, though his Judges have neither competent witnesses, proofs nor Evidence of his guiltinesse, yet if they think in their Consciences he his guilty; they may condemn him out of the Testimony of their own Private Consciences.* Is it not fit men so Principled should be Judges and Jury too; and condemn men by inspiration? So Colonel *Andrews* and Sir *John Gell* were condemned; for *Bernard* and *Pits* (witnesses against them) were apparently suborned by *Bradshaw* and Sir *Henry Mildmay* against them, and forsworn in the same cause; and good proof offered to the Court, that they were both Flagitious men, of scandalous life and conversation. The letter (supposed to be sent by *Andrews* to *Gell*) was delivered to *Bradshaw*,

Bradshaw, whereof *Bradshaw* sent a Copy onely to *Gell* at 10. of the clock at night, and had a warrant then ready to arrest *Gell*, which was done early next morning before he could conveniently discover it: Yet was *Gell* sentenced for Misprision of High Treason. See Sir *John Gells* case stated *August*, 1650. with Colonel *Andrews* Attestation (in his behalf) under his hand a little before his death. And though Sir *John* was Impeached and Mr. Atturney prosecuted him onely for Misprision; yet had he much ado to keep that bloud-thirsty, old cur *Keeble* from taking a leap at his throat, and giving Judgement against him for High Treason. So for want of Law Sir *John* had like to be hanged by Inspiration and Instinct of the Spirit. He that will see more of the Independent Tenets, Let him read *Cl. Salmasius* chapter 10. *Defensionis Regiæ, Elenchus Motuum nuperorum in Anglia.* And the History of Independency first and second part. These 6. I have selected, that by comparing their Doctrine with their daily Practise, the Reader may perceive what pious Christians, good Patriots, and upright Judges, these engaged, Independent Commissioners of the High Court of Justice are like to prove. The builders of this New Common-wealth or Babel, hold forth to the People, Justice and Liberty, as their Motto: as if those excellent gifts had never received their birth, nor been so much as shewen to the People untill they murdered the King, and stepped into his Throne. But how righteous a *Free-State* or Common-wealth is this like to be? And how well are the People therein likely to be instructed in the waies of Righteousnesse, Justice and Charity, and improved in good life and conversation, by men so principled as aforesaid, Let the

the world judge. Especially when they observe, That our New Statists have enacted in the said pretended Act. 2. *January*, 1649. enjoyning the Engagement, That whosoever will promise Truth and fidelity to them by subscribing the Engagement may deal falsely and fraudulently with all the world besides. And break all Bonds, Assurances and Contracts made with Non-engagers, concerning their Estates; and pay their Debts by pleading in Bar of all Actions, That the complaint hath not taken the Engagement: This is to rob the Egyptians of the good things of this world, This is to break their Faith by the Motions of the Spirit, This is to cheat and rob their Neighbours without breach of Charity or Justice, and without imputation of Sin according to their aforesaid Tenets.

3. I am come now to consider in the third place, *The way and Manner of their proceedings*; How consonant they are to the usuall proceedings of our known Lawes, and Legall Courts of Judicature; (the best Inheritance of all Freemen) whereof see Colonel *Andrews* 3. Answers in his Defence given into the said High Court, herewith printed.

1. The first course they commonly take is; To break open mens Houses, Studies, Chests, &c. and seise their Papers; and thereby hunt for Matter of Charge against them: And then to examine them against themselves, upon the said Papers, contrary to *Magna Charta* which saith, *Nemo tenetur prodere seipsum.* And contrary to the Doctrine of Christianity, which forbids a man to destroy his own life, or be, *Felo de se*, as many men unwittingly do, who answer to captious, ensnaring questions. When that tempting question

queſtion was put to Chriſt; *Art thou the King of the Jews?* He returned no other Anſwer then *Thou ſayeſt it: Why askeſt thou me?* Ask them *that heard me*, That is, Ask witneſſes. It was objected againſt the Oath *ex officio*, That it was High Injuſtice to examine a man againſt himſelf: Becauſe his Anſwers may only ſerve to condemn, but not to acquit him.

2. They uſually break open houſes with Souldiers, at all houres of the night, pulling men out of their beds with great violence and Terrour, and ſo carry them away, under pretence whereof Robberies and Murders have been committed, Whereas by the Stat. 1. Ed. VI. chap. 12. and 5. and 6. Ed. VI. chap. 11. A man ought not to be accuſed of High Treaſon but to one of the Kings Counſel; or to one of the Kings Juſtices of the Aſſize; or to one of the Kings Juſtices of the Peace being of the *Quorum*: or to 2. Juſtices of the Peace where the Offence is committed. *Cooks* 3. *Inſtit. chap.* High Treaſon, *pag.* 26. 27, 28.

3. They Commit men to Priſon without any Accuſation or Accuſor made known, and during pleaſure: and detain them in Priſon many yeares together without any Legall proceedings or Charge againſt them; ſharing their Eſtates, Offices and Revenues (by Sequeſtrations and Suſpenſions of the Profits) amongſt themſelves; without any Crime objected: And ſo leave them to ſtarve, rot and dye in naſty Gaoles for want of Maintenance, under the cruelty of covetous and mercileſſe Gaolers, whom they bear out (for mony) in all their Extortions. And being thus impriſoned and wounded with the diſpleaſure of the State, no man dares adventure, upon any ſecurity, to lend him money for fear of incurring the diſfavour of

of the State, and a Note of Malignancy, whereby their Priſons are become private Slaughter-houſes, as well as their Courts Publick ſhambles of Injuſtice. Priſoners in the Tower of London (To which priſon no Goale-delivery belongs) were alwaies wont in the time of (*that ſuppoſed Tyrant*) King Charles I. and his Predeceſſors, to have allowance from the King, according to their ſeverall degrees; As 5l. a weeke for an Eſquire, &c. although the King deprived them of no part of their Eſtates untill conviction, and this Maintenance was provided for them by the Lieutenant of the Tower, and in reſpect of his care and paines in procuring it he had Fees, and not otherwiſe, though now they continue and encreaſe the ſaid Fees; the cauſe being taken away the effect ceaſeth not. But theſe men now in power, after they have Committed men and robbed them of their Eſtates, without cauſe ſhewen, are ſo far from giving them any allowance to feed them; that they ſhut them up cloſe Priſoners in unwholſome Chambers, denying them the Liberty of the Tower, and the benefit of freſh Aire (the Cameleons Diet) for their health, and reſort of friends, for their accommodation. And that they may be ſure to *deprive them of all legall meanes by* habeas corpus *to recover their liberties*; They Commit men by *illegall warrants* not expreſſing any particular Offence or cauſe for their Commitment: ſo that it is impoſſible for the keeper of the priſon to obey the *habeas corpus*, which is directed to him in theſe words: *Præcipimus tibi quod corpus A. B. unà cum cauſa detentionis ſuæ, habeas coram nobis, &c. ad recipiendum ea quæ curia noſtra, &c.* Whereupon the Gaoler or Sheriff is to bring his Priſoner to the Bar, and tender his *mittimus* to the Court, ſhewing

Witneſs about 3000. Scottiſh Priſoners of War ſtarved to death at Durham: where they eate one another for hunger. Theſe were taken at the battle of Dunbar an. 1650. 3. Sept. and many hundred Priſoners have been murdered in Gaoles, with hunger, cold, naſtineſs and contagion, after they have been robbed of their Eſtates and no Crime laid to their Charge: this is become a daily practiſe.

ſhewing the particular cauſe of his Impriſonment, that the Court may judge whether it be Legall, or no. *Doloſus verſatur in Generalibus.* In the Acts of the Apoſtles, chap. 25. verſ. 26, 27. *Feſtus* thought it unreaſonable to ſend *Paul* a priſoner to *Ceſar* (to whom he had appealed) and not withall to ſignifie the Crimes laid to his Charge. See Cooks 2. Inſtit. fol. 591.

4. Their uſuall Courſe of *practiſing and ſuborning witneſſes, tempting them with hopes and terrifying them with fears*, is ſo notorious; That it is known the Counſell of State have hundreds of *Spies and Intelligencers, Affidavit-men and Knights of the Poſt*, ſwarming over all England as Lice and Frogs did in Egypt: and have both *Penſions and ſet rates for every Pole brought in: So that now the whole Nation is proſcribed, and every mans head ſet to ſale*, and made a ſtaple commodity, (far beyond the definite Proſcriptions of *Silla* and the *Triumvirate* aforeſaid) Theſe Sons of *Belial* are ſent forth to compaſſe the earth ſeeking whom they may devour. Theſe, (with the Liberty of Priviledged Spies) ſpeak bold language to draw other men into danger: and plot conſpiracies, which themſelves detect, and are rewarded like Decoy Duckes for their paines. Of this ſort are *Bernard* and *Pits* ſet no work to betray *Gell* and *Andrewes*, as aforeſaid. For which *Bernard* had 300l. and a Troop of horſe conferred upon him. *Johnſon* that falſly accuſed Sir *Robert Sherly*, and *Colonel Egerton* for their charity in relieving his wants, is another; *Varney* is a Fourth. So well are they fitted with theſe Sonnes of *Belial*, that no *Naboth* can keep his Vineyard, if a Grandee caſt a covetous eye upon it; they can prove what they liſt. Nay it is uſuall for our Grandees to moleſt one man with examining

examining him 20. or 30. ſeverall times, againſt one Priſoner, and upon one point, to diſtract his memory, and not to let him be quiet untill he perceive he muſt ſpeak what their queſtions and diſcourſes lead him to, to redeem himſelf from vexation. To ſay nothing of their Menaces, To torture men if they will not confeſs, what they impudently pretend is already diſcovered by other meanes: And their inſinuating into the Affections of witneſſes, by asking them, Whether the State doth not owe them money? And why they do not uſe fitting meanes and opportunities to recover it? And why they do not make meanes for ſome beneficiall employment?

5. *In Magna Charta*, chap. 29. it is enacted, *That no Freeman ſhall be taken or impriſoned, or be diſſeiſed of his Free-hold or Liberties or Free-Cuſtomes, or be outlawed or exiled, or any otherwiſe deſtroyed*; nor *we will not paſſe upon him or condemn him, but by lawfull Judgement of his Peers, or by the Law of the Land. We will ſell to no man, we will not deny or defer to any man, Juſtice or Right.* See Statute 2. Edward III. chap. 8. 5. Ed. III. chap. 9. 14. Ed. III. chap. 14. 25. Ed. III. chap. 4. 11. R. II. chap. 10. Pet. of Right. 3. Car. 1. 10. Edward IV. fol. 6. Dier folio 104. Cook lib. 5. folio 6. lib. 10. folio 74. lib. 11. folio 99. Regiſt. folio 86. Where note the word (*Peers*) ſignifies, that no man is to be condemned or deſtroyed, but by the lawfull verdict of a *Jury of* 12. *ſworn men of the Neighbourhood* where the Fact was committed; becauſe (in probability) Neighbours may have beſt cogniſance of the Fact, and of the life and converſation of the Party Accuſed. And theſe only are *Competent Judges of Matter of Fact*; and in many caſes of Matter of Law too, if they will take the

knowledge of the Law upon them. Neither can this Petty Jury of 12. men go upon the Prisoner unlesse a *Bill of Enditement* containing the whole Matter of charge be first found in open Court by a Grande Jury or Enquest of sworn men; who are to enquire of the Fact upon the Oathes of two lawfull witnesses (at least) to every materiall Point of the Enditement: and then, when the Grande Enquest are all agreed, the Foreman endorseth upon the back of the Bill (*Billa vera*) and then presents it in open Court, as the Information for the King of the whole Enquest: otherwise the Enditement is quasht, and null. Cookes 3. Instit. chapter High Treason and Petty Treason. And whereas the Statute saith, (but by his Peeres, or by the Law of the Land) *Lex Terræ*, signifies, The Antient Customes of the Land; Amongst which Fundamentall Customes; Trialls by Juries hold a principall place. And *when the King Charles I. accused this Parliament, That they disposed of the Subjects Lives and Fortunes by their votes, contrary to the known Laws of the Land; This Parliament in their Remonstrance, Sept. 1642.* (1. Part of the Book of Declarations fol. 693. *highly resented it.* And *Magna Charta* being nothing else but an Affirmation of the Common Law, inserted this Clause (*or by the Law of the Land*) as a speciall caution, not to annihilate or frustrate (no; not so much as tacitely, or by preterition) any of the said Fundamentall Lawes or Customes; nor any other particular lawfull Customes, which are not one and the same in all parts of England: Witnesse the Custom of *Gavelkind* in Kent. I have told you what our known antient Legal Courts of Justice do. And I must tell you that *Legal formes and set Modes of proceedings are*

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ſo eſſentiall unto Juſtice, that without them we can not meaſure the Rectitude of Obliquity of Juſtice or Injuſtice: where they do not chalk forth the way, both Judges, Lawyers, Officers and Attorneys will tread what ſubtle, obſcure pathes they pleaſe, uſurp an Arbitrary power and latitude to prevaricate; and ſo far corrupt and work the Law of their ſenſe, that they will rather *Leges dare*, then *Leges dicere*, ſo that what is Law in one mans caſe, ſhall not be ſo in another mans, They will ſo intricate and intangle cauſes; that every caſe ſhall be *Caſus pro amico*; as Civilians call it; when upon full hearing, The Merits of the cauſe appear ſo equall, and undiſtinguiſhable on both parties; that the Judge may (according to his diſcretion) look upon the Merits of the Perſons onely: and give the cauſe; *Pauperiori, viâ Charitatis*, or *digniori, ratione virtutis. Juſtice not fixed by Formalities, will become ſuch a vagrant, that no man ſhall know where to find her.* Let us now ſee what our new ſhambles, our upſtart High Court doth. Which in this work of Reformation and Deſtruction, ſo much abhorres Superſtition and Ceremonies, and ſticks ſo cloſe to a Summary way of proceeding, that they have not onely ſtripped, but ſlead her: as their Maſters the Parliament not onely fleece but flea the People. In lieu of a Bill of preſentment, by a Grande Enqueſt, the pretended Parliament or Counſell of State, ſend *a Liſt of ſuch Perſons names*, as they have proſcribed, And ſet a *Nigrum Theta* upon, (as men dangerous to their deſigned intereſt) to the Maſters of their Slaughterhouſe, The ſaid High Court, together with ſuch Depoſitions as they have taken in corners, againſt the Priſoners: and this is ſuch a forejudging of them that the ſaid Court neither will nor dare acquite, whom their

their Masters and Pay-Masters have precondemned. Next *Articles of Impeachment in nature of a charge* are drawn up against the Prisoner (although such Articles are nothing in Law, which regards onely a Bill of Inditement) Then the Prisoner (after a close Imprisonment for he knows not what) upon two daies warning is led to the Bar; where the first work is to dazle his eyes, amaze and distract his Judgement and Memory with the terror of their Souldiers, the Numerousnesse, high affronting words and looks of his Judges; having thus mortified the Prisoner, he is commanded to hear his charge read: and bid *plead to it, Guilty, or not Guilty.* If he own their Jurisdiction and plead the said Generall Plea, they have him where they would have him: they never ask him; how he will be tried, Whether by God and his Country? For God hath no hand in these proceedings, nor amongst such Judges: and this rod of Iron is provided to bruise his Country, as well as himself. Lieutenant *Collonel Lilbornes* Trial hath taught them That it is an easier Matter for them to pack a Butcher-Rowe of confiding, partiall Judges, then a Jury; who are liable to be challenged, if suspected of partiality. When *Collonel Andrewes* claimed to be tried legally as a Freeman by a Jury, and vouched Great Charter, and many other Statutes, (whereof see his aforesaid 3. Answers) that sneaking Bloud-sucker, illiterate *Keeble* answered, Those Statutes were out of date now, (meaning, They were taken away by conquest.) *So that this Shamble Rowe of Judges, take upon them to be, both Judges of the Law, (without acknowledging the Fundamentall Lawes of the Land, or taking any Oath of Indifferency to the People) Triors of the Fact, or Jurates*

Jurates of life and death (without being ſworn to find according to Evidence) as well as Parties and Proſecutors. Theeves upon the high way may as juſtly arraign a True man before them, becauſe he brought no more Mony in his purſe, offered to draw his ſword and hid his mony about him in contempt of their Juriſdiction and Authority; and condemn him upon ſuch a Mock Triall and Mummery or Enterlude of Juſtice, as theſe Fellows. *If they allow him Counſel*, his Counſel muſt apprehend the mindes of his Judges, at his perill; and not be ſo faithfull and diligent as to help his client in earneſt; Leſt the Counſel of State, or ſome other power (whoſe will is a Law) interpoſe, and baniſh him 20. miles from London; as they did Maſter *Sprat*, Sir *John Gells* Solicitor, before Sir *Johns* buſineſſe was ended; whereby Sir *John* was left deſtitute of meanes to follow his buſineſſe, himſelf being Cloſe Priſoner. If they permit any *witneſſe to ſpeak on the priſoners part*, He comes at his perill: Sir *John Gells* firſt witneſſe was ſo baffled in Court, that the reſt ſtole away and durſt not appear. *I have not heard whether they give any Copy of their Aricles of Impeachment to the Priſoner*, (for they cover all their doings with ſuch a Plaguy Egyptian Darkneſſe, that we cannot ſee a glimpſe of light) or whether they go a Starre Chamber way, and make him Anſwer *Ore tenus*, and *ex tempore* for his life and Eſtate. *But if they give him any Copy, or any time to anſwer, it is not above four or five daies or a week, nor do they allow him Counſell or any other Clearing of the way to his defence, untill he have enſnared himſelf by owning their Juriſdiction, and pleaded the Generall Plea, Not Guilty. If he pleade not an Iſſuable Plea, and yield to their Juriſdiction, quitting all benefit of the Law and Legall proceedings; the Razor is at his throat,* they

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they thirst after his Bloud, and they presently sentence him guilty of contumacy and take it pro confesso. *And if he do submit and plead: His plea will have the operation but of a Psalm of Mercy, prolonging his life but for a short time, in the interim* Keeble *and his Court plays with him as a Cat with a Mouse, and then devours him. For no man is sent to this Court to be Tried, but to be condemned. In hac arena dimicatur sine missione.* Herein they shew themselves much more Tyrannous and bloudy then the Duke *D'Alva* when he erected his said Counsel of Troubles, called *Concilium Sanguinis*, or the Bloudy conventicle; as this will shortly be. For saith Strada Declar. 1. lib. 7. *Procurator regium menses 4. Conficiendæ Accusationi accipiens sibi; 5. Concedebat ad Defensionem regis (Egmontio, Hornano, &c.)* The Kings Atturney took 4. Moneths time to draw up the charge or accusation, and gave 5. Months time to the Respondents to make their defence. And had he given less then 5. Moneths time, To Instruct Counsel, Pen their Answers, produce and summon witnesses, inquire into the lives and conversation of their Accusors, his feet had been swift to shed bloud. *Nulla unquam de morte hominis cunctatio longa est*, But our Inquisitors take whole yeares to themselves to hunt for Matter of Accusation, and hire and engage witnesses against men kept in ignorance and want with close Imprisonment: and allow not them so many daies to make their Defence. *All manner of Accusors and witnesses, though apparently suborned and forsworn in the same cause, and proofes without exceptions offered to the Court that they are of infamous life and conversation, are in this Court (the Object of whose desires are Bloud and Confiscations, not Justice) lawfull witnesses,* such witnesses were the said *Bernard* and *Pits*; Monsters of men. See Sir *John Gells* case

caſe ſtated: Printed about Auguſt, 1650. *To cite any antient known Laws or Statutes, or any other then their own new coined Acts, paſſed by this* 8th. *Parts of a Houſe of Commons,* (*ſince they became elect Members choſen by* Thomas Pride) *is to incur the High Indignation of the Court, expreſſed abundantly in their words and looks. But to put them in mind of the Parliaments many Declarations, To maintain the antient known Laws, Liberties and Properties of the People, is to ſcandall the preſent Government and incur the Cenſure of that unknown Myſterious Crime which knaves call Malignancy.* The witneſſes and Judges being thus irretragable; the firſt may ſwear what they will, the ſecond may judge what they will, ſince they are left at large and have all things *in ſcrinio pectoris:* and Book Law muſt give place to Bench Law, *The Juriſdiction and Authority of this New unparalled Court is ſuch a Miſtery of iniquity, ſo unſcrutable and unqueſtionable,* that if a Priſoner ſcruple (in the leaſt) either it, or any of the uncouth proceedings of it, it is a Mortall Sinne to him; and he is preſently interrupted, and affronted both with diſdainfull words and looks, And told, *We are ſatisfied with our Authority that are your Judges,* (So are Theeves upon the high way ſatisfied with their Authority that rob and murder us by Gods Providence and permiſſion.) *It is upon Gods Authority and the Kingdoms* (yet what they do is againſt the will of God revealed in his Scriptures: and againſt the known eſtabliſhed Lawes, Statutes and continuall Practiſe of the Kingdom:) *Which Authority commands you in the name of the People of England to anſwer them.* (Yet at leaſt) 9. Parts of 10. of the People ſo much abhor theſe and other their Practiſes, that every mans mouth ſpeakes againſt them with bitter curſes and reproaches,

See the Trial of King Charl. I. in the Hiſtory of Independency 2. Part. pag. 91 &c.

to restrain which they have minted Acts of New Treasons, to make men Offenders, nay Traitors, even for bare words; and erected this bloudy, illegall Theater, The High Court (so called, for its High Injustice) as a Spanish Inquisition over them, and every mans hand would be about their eares, did they not keep an Army of Janisaries to suppresse them.) *Their Authority they do avow to the whole World, that the whole Kingdom are to rest satisfied therewith.* (You see here a Whip and a Bell provided to keep the whole Kingdom in awe: the declared Supreme power of their Soveraign Lord the People, must resign their known Lawes to their Trustees, their Representatives in Parliament, and take New Lawes from their Arbitrary votes, or woe to be to their Necks and Shoulders.) *I must interrupt you, what you do is not agreeable to the Proceedings of any Court of Justice. You are about to enter into Argument and dispute concerning the Authority of this Court: before whom you appear as a Prisoner; you may not dispute the Authority of this Court: nor will any Court give way to it, you are to submit to it.* (It is not safe to confute a lie told with Authority. Yet if a man be Endited of Treason or Felony in the Court of Common Pleas, a man may Demur to and dispute the Jurisdiction of that Court; becaus it is not in Criminall Causes, *Competens Forum*; nor the Judges Competent Judges: every man, and every cause must be tried *Suo Foro, non Alieno.* So if a Peer be arraigned in the Kings Bench. And for this upstart, unpresidented High Court; it is no Court of Judicature at all; as being erected without lawfull Authority; Consisting of Incompetent Judges: no Records belonging to it: and tending to disinherit, and disfranchise all the People of England:

land, and to murder them.) *You may not diſpute the Juriſdiction of the Supreme and Higheſt Authority of England, from which there is no Appeal, The votes of the Commons of England aſſembled in Parliament is the Reaſon of the Kingdom.* (Oh Britiſh, irrationall Kigdom! Where 40. or 50. Anabaptiſticall Members, the Dregs and lees of the Houſe of Commons, after all the beſt and ſincereſt (7. Parts of 8.) had been racked and purged out at the Bunghole by *Cromwell the Bruer* and *Pride* his *Drayman* ſhall be called the Reaſon and Law of the Land. This confirmes the truth of what King Charles I. Objected to the Parliament (whereof I have formerly ſpoken) *That they diſpoſed of the Subjects Lives and Fortunes, by their own Votes, againſt the known Lawes of the Land.* But that there ſhould be no Appeal to their declared Soveraign Lord the People, from their ſubordinate Truſtees in Parliament is wonderfull; Conſidering that in all Governments the laſt Appeal is ever the Higheſt and moſt Abſolute power. But it may be they will be the Peoples Truſtees in ſpight of their Teeth, and by the power of the Sword; and ſo free themſelves from rendring any account of their Stewardſhip. *You may not demurre to the Juriſdiction of the Court. If you do, they let you know, that they overrule your Demurrer, and affirm their own Juriſdiction. Reaſon is not to be heard againſt the Higheſt Juriſdiction, the Commons of Engl. make a direct and poſitive Anſwer, either by denying or confeſſing, and put in immediately an iſſuable Plea,* Guilty, *or* Not Guilty *of the Charge, or we will record your Default and Contumacy, and by an implicite confeſſion take you Guilty* pro confeſſo, *and immediately give Judgement againſt you.* This (as I told you before) is it that blanches the Deer into the Toile, But God deliver us from that

Juriſdiction that is too high to hear Reaſon: and that overrules Demurrers before they be heard.) I have told you as much of the proceedings of this Court as the Novelty, Obſcurity, Uncertainty and confuſion thereof will give me leave. Let me now (by way of overplus) give you the great dangers and Slavery that will befall all ſorts of People if they tamely and cowardly ſuffer themſelves to be deprived of their antient, Legall Trialls by Enditement and Juries of the Neighbourhood: (then which the whole world cannot boaſt of a more equall way) and ſuffer their Lives, Liberties, Eſtates and Honours to be ſubject to an Arbitrary, Extrajudiciall conventicle of Bloud, *(Cromwells New Slaughterhouſe)* which hath neither Law, Juſtice, Conſcience, Reaſon, Preſidſident or Authority Divine or Humane, but onely the pretended Parliaments irrationall Votes and the Power of the Sword to maintain it, which will prove a Cittadell over their Liberties, a Snare to their Eſtates, a Deadfall to their Lives, and Scandall to their honors and Families, if not timely oppoſed.

1. *By the Law The Enditement muſt ſpecifie what the Treaſon is, and againſt what Perſon committed; As, againſt our Soveraign Lord the King, his Crown and Dignity.* But in the ſaid Articles of Impeachment, it is alleaged that the Treaſon is committed againſt the preſent Government; or, againſt the Keepers of the Liberties of England; but in this dead water our turning Tide between the old Regall, and this New, unknown Government; no man knows how to do, look or ſpeak for fear of contradicting the guilt of an Interpretative Treaſon, upon the ſaid two Statutes for New Treaſons, and before this boundleſs, lawleſs New

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Court. And *to say that Treason is committed against a Government* in abstracto *is Non-sence: it must be said that Treason is committed against the Governors* in Concreto, *naming them.* For there being, *no Treason without Allegeance*; And *Allegeance being a personall Obligation, must be due from a certain known Person, to a certain known Person or Persons.* And therefore *the Keepers of the Liberties of England, not being yet made particularly known to us, who they are, or where to be found, or what their power, Duty or Office is; and being not tied by any set Oath, to deal well and truly with the People, (as Kings are by their Coronation Oath; for if the stipulation be not mutuall, the People are Slaves, not Subjects.)* Since the Duties of Allegeance and Protection; Obedience and Command being reciprocall (as they must needs be, the Parliament having declared the Supreme power to be in the People; they must not govern them *Mero Imperio* (by Lawless votes) like Turkish Tartarian and Russian Slaves.) *I cannot owe nor perform Allegiance to those Individua vaga (the Keepers or Gaolers of our Liberties)* nor to an Utopian Commonwealth. And without Allegeance no Treason: for in all Enditements of High Treason it must be alleaged, *That the Accused did (Proditorie) perpetrate such and such Crimes, Contra debitam Allegantiam suam.* And the word *(Proditorie) signifies the betraying of a Trust:* According to the Proverb; In Trust, is Treason. *Now where there is no profession of Allegeance, there is no Acceptance of a Trust, no man can trust me against my will.* I was born under a Regall Government, have read the Stat. Recognition, 1. Jac. Have taken (as well as others) the Legall Oathes of Allegeance, Obedience and Supremacy to the *King* his *Heires* and *Lawfull Successors*, imposed upon me by lawfull Authority, and from which no power

power on Earth can abſolve me: and ſo much I atteſt in the Oath of Supremacy. And how I ſhould now come (after the New Moduling of the Parliament and Kingdom by Souldiers) to owe Allegeance to *Cromwell* the *Bruer*, *Scot* the *Bruers Clerk*, *Bradſhaw* the *Murderous Petty fogger*, Sir *Henry Mildmay* the *Court Pander* and *Projector*, *Holland* the *Linkeboy*, *John Trenchard* that packed a Committee (in which he was a Member) and voted to himſelf 2000l. *Love* the ſuper-inducted Six Clerk, or any other of that Self-created Authority, let them ſheath their ſwords and tell me.

See the Additionall Poſtſcript at the Latter end of this Book.

2. *An Enditement muſt certainly allege the Offence committed, in reſpect of the Matter, Time, Place, Perſons and other Circumſtances*; But in theſe Articles of Impeachment they tie themſelves to no ſuch certainties; Whereby the Accuſed knows not at what ward to lie, nor how to make his Defence. The Circumſtances of Time, Place and Perſons, being the aſſured Teſtimony of all Humane Actions. This Lawleſs Court leaves him in a vaſt Sea of Troubles, without Pole-ſtar, card or compaſs to ſteer by: The Arbitrary Opinions of this Court, declared upon emergent Occaſions, being a falſe-hearted Pilot to him. *Theſe Judges not being of Counſel with the Priſoner, as our Legall Judges are, who ſwear to do Juſtice according to the Law.*

3. *By the Law, any learned man that is preſent, may inform the Court, for the benefit of the Priſoner, of any thing that may make the proceedings erronious.* Cooks 3. Inſtit. p. 29. But the whole Proceedings of this Court, their Meeting and ſitting being erroneous, here is no room left for Admonition, To take away their errours, is to take away Court.

4. Cooks

4. Cooks 2. Inſtit. pag. 51. expounding the 29. chapter of *Magna Charta* hath theſe words. *All Commiſſions ought to be grounded upon the Laws of England* (not upon the votes of the Houſe of Commons) *and to contain this Clauſe in them. To do what is juſt according to the Laws and Cuſtoms of England*, (not to execute the ſeverall powers given them by the Act. 26. March 1650) and a little further he ſaith, Againſt this Antient and Fundamentall Law I find an Act of Parliament made 11. Hen. VII. c. 3. That as well Juſtices of Aſſize as Juſtices of the Peace, without any finding or preſentment by the verdict of 12 men, upon a bare Information for the King before them made, ſhould have full power and Authority by their Diſcretions, to hear and determine all Offences and Contempts committed, or done by any Perſon or Perſons, againſt the Form, Ordinance or effect of any Statute made and not repealed; ſaving Treaſon, Murder or Felony. By colour of which Act ſhaking this Fundamentall Law, it is not credible what horrible Oppreſſions and Exactions, to the undoing of infinite number of People, were Committed by *Empſon* and *Dudley* Juſtices of the Peace throughout England. And upon this unjuſt and injurious *Act*, *a New Office was erected (as commonly in like caſes it falleth out) and they made Maſters of the Kings Forfeitures. (I hear ſuch an other Office will be erected, when the Novelty of this wonderfull High Court is leſſened, and the yoke thereof throughly ſetled upon the Peoples Necks)* Yet obſerve the ſaid Act. 11. Hen. VII. c. 3. went not ſo high as to Treaſon, Murder and Felony: But by the Stat. 1. Hen. VIII. chap. 6. the ſaid Act 11. Hen. VII. was repealed, and the reaſon given, For that by force of the ſaid Act it was manifeſtly known; That many ſiniſter and craſty, forged and feigned Informations

formations had been pursued against many of the Kings subjects, to their great dammage and wrongfull vexation. The ill successe hereof (saith *Cook*) and the fearfull end of these two Oppressors, (who were Endited and suffered for High Treason for all the said Act 11. Hen. VII. passed in a full and Free Parliament. Cooks 3. Instit p. 208.) *Should admonish Parliaments, That instead of this Ordinary and precious Triall by the Law of the Land, they bring not in Absolute and Partiall Trialls by Discretion.* And in his 4. Instit. page 41. *Cook* saith, *Let Parliaments leave all Causes to be measured by the golden and streightned wand of the Law, and not the uncertain and crooked cord of Discretion: for it is not almost Credible to foresee, when any Maxime or Fundamentall Law of the Land is altered, what dangerous inconveniences will follow; as appeares by this unjust and strange Act* 11. Henry VII. chap. 3.

5. *This Parliament alwaies declared they bore Arms against the King, in Defence of the Laws, Liberties and Properties of the People.* This way ran the whole current of their Declarations. *And they alwaies reckoned Magna Charta, the Petition of Right and Trialls by Juries, the Chief and most Fundamentall of all our Laws. See their* 1. *Remonstrance: Therefore in their* 7. *Article against Strafford. They charged him with High Treason, for giving Judgements against mens Estates, without Trials by Juries. Much aggravated by Master St. Iohns in his aforesaid Argument against Strafford.* And for the better preservation of Legall Trialls by Juries, it is provided in the Bill of Attainder of Strafford, that the case of the same Earl should not be used as a President in succeeding times. *And in two of this Parliaments late Declarations* 9. *Febr. and* 17. *March* 1648. *The Parliament promiseth,*

To

To preſerve and keep the fundamental Laws of the land, for preſervation of the lives, liberties and properties of the people, with all things incident thereto. Now to erect an arbitrary lawleſs high Court, to give judgment againſt mens lives and eſtates, and attain their bloods, without Enditement found by a grand Jury, and a trial by a Jury of twelve ſworn men vicineto, *is a far fouler breach of truſt in them againſt their Sovereign Lords the People, than all they charged the King withall, and a far higher act of tyranny and injuſtice than either the late King, or* Empſon *and* Dudley, *or* Strafford *were accuſed of.* But if they alledg, They do not put down Juries in general, but only in ſome particular mens caſes and upon neceſſity. I anſwer, *That we are all born Freemen of* England *alike, That our ancient known Laws, Laws Courts and trials by Juries are our inheritance equal alike to all. And one party or part of the people ought not to be diſherited, diſfranchiſed or forejudged no more than another. No man can be ſaid guilty of any crime until he be legally convicted and ſentenced, the Law muſt firſt go upon him and condemn him,* Ubi lex non diſtinguit, non eſt diſtinguendum. *If we do not live all under one Law and form of Juſtice, we are not all of one Commonwealth.* See the aforementioned Gentlemans Argument, *againſt the ſpecial Commiſſion of the Court of York.* For *Neceſſity*; our preſent power is under none, but the fears and terrors of their own guilty conſciences. No apparence nor probability of any enemy by their own confeſſion; nor can they plead in their excuſe, a neceſſity which they have brought upon themſelves. I know *ſome Kings have,* de facto, *uſed the Animadverſion of the Sword to cut off ſuch powerful and dangerous perſons as could not ſafely be called to account by the Law; ſo dyed* Joab, Adonijah, *&c. for which*

the rule is, Neminem adeo eminere debere, legibus interrogari nequeat; qui jus æquum ferre non potest, in eum vim haud injustam fore. No man ought to advance himself above the powers of the Law; he that will not submit to equal right, if he be cut off by violence, suffers no wrong; *but this is to be understood of the eminency and greatness of the person, not of the greatness of the crime, whereof no man is to be forejudged, because a great crime may prove a great calumny, until a legal trial have adjudged it.* But there is no person in *England* so eminent for power or Authority, but that the least of *Bradshaws* Ban-dogs can drive him to the Slaughter-house, & make him offer his throat to *Keeble*. Therefore *Animadversio Gladii*, if at any time lawful, is now unlawful. *To make great examples upon men of little power, is great injustice.* But the way of this Court is not *Animodversio per Gladium*. It is a Mocking, a Counterfeiting, an Adulterating and Alchimisting of Justice; it is to falsifie her weights and ballance, and steal her sword to commit Murder withall.

Col. rews e An-

6. *By the known Laws Matter of fact is intrusted to the Jury, matter of Law to the Judges, to prevent all errours, combinations and partiallities. The Judges are sworn to do justice according to the Law; the Jury are sworn to finde according to their evidence.* But in this high Court the Commissioners or Judges are all packed, confiding men, chosen by and out of one party, to destroy all of a different party. *They usurp the office of Judges, not being sworn to deal well and lawfully with the people (as by the said* Stat. 18 Ed. 3.) *nor to do justice according to the Law. But only to execute powers given by the said* Act, 26. Mar. 1650. *And they arrogate (as Jury-men) to be Triers of the Fact, without being sworn, to find according to*

to evidence. So that they are Judges, Juries, and parties, (& for ease of their tender consciences (without any Oath of Indifferency. A most excellent *Compendium* of Oppression. They may go to the Devil for injustice, and not be forsworn. Great is the priviledge of the godly.

7. *The prisoner may except against his Jurors, either against the Array, if the Sheriff or Bayly impannelling the Jury, be not wholly disingaged and indifferent, both to the cause, and to the parties, prosecuting, and prosecuted; or against the Poll, he may challenge* 35 *peremptorily, & as many more as he can render legal cause of challenge for.* As for defect of estate, or other *abilities*, or for *partiality, Disaffection, Engagement, Infamy.* But this Array of Jury-men Judges (a Medley so new we know not how to express it) though picked and empannelled by an engaged remainder of the Commons, and abroxious to all exceptions, must not be challenged, their backs are too much galled to indure the least touch. *Take heed you scandal not the Court* (*cries* Mr. Atturney) See Col. *Andrews* three Answers.

8. *Many exceptions in a legal Trial, are allowed against Imperfections, Uncertainties and Illegallities in the Bill of Endictment, for the advantage of the Prisoner.* But no Exceptions are allowed against these illegal Articles of Impeachment, which are made uncertain, intricate and obscure and ambiguous purposely to puzle, confound and entangle the Respondent.

9. *By the Law a bill of Endictment must have two full and clear lawful witnesses to every considerable Matter of Fact, both at finding the Bill and at the Trial.* Cooks 3. Instit. pag. 25, 26. And *Probationes debent esse luce clariores.* Proofs must be as clear as the Sun, *not grounded upon Inferences, Presumptions, Probabilities.* And the Prisoner must be *Provablement Attaint*, saith the Stat.

Where is but o witnes shall b by com before Earl M Cooke, i

Stat. 25. Ed. 3. chap. 2. Cooks 3. Inſtit. pag. 12. *The word (attainted) ſhews he muſt be legally proceeded with; not by abſolute power as formerly had been uſed (and as is now uſed by this bloody High Court)* But before theſe Slaughter-men of the High Court, all manner of witneſſes, Legal or Illegal, one or two, ſworn or not ſworn, or apparently forſworn and ſuborned, and all proofs clear or not clear are ſufficient. The Priſoner is ſent thither foredoomed, and hath its deaths Mark, his fate in his forehead.

10. The ſaid Act 26. *March* 1650. *carries two faces under one hood, and looks backwards as well as forwards.* To *facts precedent as well as ſubſequent the ſaid Act*, contrary to the nature of all Laws, whoſe office is to prohibit it before it puniſh, to warn before it ſtrike. Where St. *Paul* defineth *Sin to be the breach of Commandement, or Law. I had not known Sin but by the Law.* The Law muſt therefore be precedent to the Offence. But theſe Acts are not *Laws to admoniſh*, but *Lime-twigs and Traps to enſnare* and catch men. See Col. *Andrews* 3. Anſwers at the latter end of this book.

Fourthly and laſtly, I am to conſider, *To what end and purpoſe this new invented High Court is conſtituted and appointed?* Concerning which ſee a Letter dated 6. June 1650. *Stilo veteri*, from the *Hague*, (ſuppoſed to be *Walter Stricklands*, *the Parliaments Agent there*) as I finde it in *Walter Froſts* brief Relations of ſome affairs and tranſactions, &c. from Tueſday *June* 11. to *June* 18. 1650. wherein the Epiſtoler hath theſe words, "*One piece of the cure* (*viz.* of the dangers "that threaten your new State) *muſt be Phlebotomy*, but "then you muſt begin before Decumbency, and then it "wil be facile to prevent danger, *&c.* they are here moſt "of all afraid of your high Court of Juſtice, which they

"doubt

doubt may much diſcourage their party, they wiſh „
you would not renew the power thereof, but let it „
expire: then they think that after *Michaelmas* they „
may expect Aſſiſtance with you. And indeed that „
Court is of almoſt as much uſe to you as an Army: „
and will prevent the riſing of as many Enemies, as the „
other will deſtroy, only you muſt be ſure to execute „
Juſtice there with all ſeverity. A few of the firſt ſtir- „
rers taken away, by the power thereof, without re- „
ſpect to couſin or Countrey, will keep all the reſt „
quiet. But *whoſoever that Court condemns, let them* „
be as already dead, &c. But *let them be moſt free in* „
cutting the vena Cœphalica *(that is the Presbyterian* „
Party) for the Baſilica (or Royal Party) will be la- „
tent. *The Median* (or Levellers) would be ſpared as „
much as may be, that the body be not too much ema- „
ciated. Beſides, the blood is moſt corrupt in the Cœ- „
phalicks *(or Presbyterians)* and is the very *cauſa* „
continens of your diſeaſe. You need not fear to take „
freely of this vein, &c. Here you ſee this State Moun-
tebank gives you the uſe and application of this cor-
raſive. (The High Shambles of Juſtice) ſo fully that I
ſhall not need to comment upon it. And in the latter
end of a Letter from *Cromwel*, dated from *Dunbar*,
4. *Sept.* 1650. (as I find it in *Politicus*) ſpeaking of his
new purchaſed victory over the *Scots*, *Cromwel* ſaith;
God puts it more and more into your hands to improve
your power, (viz. your abſolute Authority) *we pray*
own his People more and more, (that is, the Army) *they*
are the Chariots and Horſmen of Iſrael (of the King-
dom of the Saints) *diſown your ſelves but own your Au-*
thority (which you enjoy under the Protection of the
Army, your Lords Paramount) *and improve it; to Curb*
the Proud and Inſolent, &c. (That is, all men of dif-

ferent opinions and parties from them, that will not engage to be true and owe Allegiance to the Kingdom of the Saints, and reſign their Laws, Liberties and properties to their luſts and wills.) That I have not miſconſtrued the contents of *Cromwels* myſtical letter, will appear by *a Diſcourſe in the ſame Politicus*, Numb. 17. from Thurſday *Sept.* 26. to *Octob.* 3. 1650. Where (according to his cuſtom) delivering forth State-Oracles to the people, He tels them in plain Engliſh, *That after the Confuſions of a Civil War, there is a neceſſity of ſome ſettlement, and it cannot be imagined (the Controverſie being determined by the Sword) that the Conquerours ſhould ſubmit to the conquered*, though more in number than themſelves. *Nor are they obliged to ſettle the Government again according to the former Laws and Conſtitutions, but may erect ſuch a form as they themſelves conceive moſt convenient for their own preſervation. For after a Civil War the written Laws (viz. eſtabliſhed Laws of the Nation) are of no force, but onely thoſe which are not written.* (And a little after) the King having by Right of war loſt his ſhare and intereſt in Authority and power, being conquered, *by Right of war the whole muſt needs reſide in that part of the People which prevailed over him*: There being no middle power to make any claim, and ſo *the whole Right of Kingly Authority in* England *being by Military Deciſion reſolved into the prevailing Party, what Government ſoever it pleaſeth them to erect, is as valid* de Jure, *as if it had the conſent of the whole Body of the People.* That he ſhould affirm, That after a Civil War the Eſtabliſhed Laws ceaſe, is ſo groſs a piece of ignorance, that there is hardly any Hiſtory extant but confutes it: As the our Barons war, and the Civil War between *York* and *Lancaſter*,

caſter, Our Eſtabliſhed Laws flouriſhed; ſo did they after the *Norman* Conqueſt. How many Civil Wars in *France* have left their Laws nntouched? That of the Holy Leage laſted 40 years; *Belgia* keeps her Laws maugre her inteſtine Wars: What is now become of the Parliaments declared Supreme Power and Soveraign Lord the People, the Original and Fountain of all juſt power? are they not all here proclamed Ear-bored ſlaves for ever? But I had thought that an Army of Mercenary Saints raiſed, payed and commiſſioned by the Parliament to defend the Religion, Laws, Liberties and Properties of the people, and the Kings Crown and Dignity, according to the Proteſtation and Covenant, and the Parliaments Declarations, would not have made ſuch carnal and hypocritical uſe of their Victories gotten by Gods providence and the peoples money, as to deſtroy our known Laws, Liberties and Properties, and claim by Conqueſt, and impoſe their own luſts for Laws vpon us, thereby rendring themſelves Rebels againſt their God, their King and Countrey. Nor was it ever the State of the Quarrel between the King and Parliament whoſe ſlaves the people ſhould be? Or whether we ſhould have one King, Governing by the known eſtabliſhed Laws? or 40 Tyrants Governing by their own luſts and arbitrary votes, againſt our written Laws? Nor can the ſucceſs make n Conqueſt juſt, unleſs the cauſe of the war were originally juſt, and rhe proſecution thereof juſtly managed. As 1. To *vindicate* a Juſt Claim and Title. 2. *Ad res repetendas*. To recover Damages wrongfully ſuſtained. 3. To repel an injury done to your ſelf, or to your Ally in league with you.

The ultimate end of theſe wicked endeavors is, To eſtabliſh

eſtabliſh and cement with the blood of their adverſaries, the Kingdom of the Brambles or Saints, already founded in blood, by cutting of all ſuch by their ſaid New Acts of Treaſon and High Court of Juſtice, as will not bow their Necks to their Iron yoke. Which appears more clearly in an *Additional Act giving farther power to the ſaid High Court,* (dated 27. *Aug.* 1650.) *To hear and determine all Miſpriſions or Concealments of Treaſons* mentioned or contained in any of the ſaid Articles or Acts of Parliaments: And to inflict ſuch puniſhments, and award ſuch execution, as by the Laws and Statutes have been, or may be inflicted. *This Law (if I miſcal it not) conſidering how they have multiplied Treaſons by their ſaid 3 New Statutes,* 14. May, 17 July 1649. *and* 26. March 1650. *Whereby bare words without Act are made High Treaſon, contrary to thoſe well approved Statutes,* 25 Edw. 3. *chap.* 2. 1 Hen. 4. *chap.* 10. 1 Edw. 6. *chap.* 12. 1 Mariæ, *chap.* 1. Cook 3 Inſtit. *ſaith, That words may make an Heretick not a Traitor,* Chap. High *Treaſon. And the Scripture denounceth a woe to him; That maketh a man an Offender for a word, is one of the cruelſt, and moſt generally dangerous and entrapping that ever was made. For hereby all relations, Husband and Wife, Parents and Children, Brothers and Siſters, Maſters and Servants, are all injoyned to be informers againſt, and accuſers of one another (which is to take upon them the Devils office (and be* Accuſatores Fratrum) *for light and vain words ſpoken only in paſſion or ignorantly: or elſe they fall into the jaws of this all-devouring Court,* from whence, no more then from hell, there is no redemption) *for Miſpriſion of Treaſon: the Penalty whereof is loſs of liberty and lands for life, and of goods for ever,*

Who

Who can imagine lesse hereby, but that *our Statists intend to raise a yearly revenue by this Court, by Forfeitures and Confiscations: and to erect an Office of Master of the States Forfeitures: like Empsons and Dudleys in* Hen. VII. *time aforesaid.* And so continue this Court, to weede out the Ancient Inhabitants *Canaanites* and *Amalekites*. The said Additional Act, 27. *Aug.* 1650. concludes, That the said High Court shall not Examine, Try or proceed against any person other then such as shall be first by name appointed by the Parliament or Councel of State. It should seem the Parliament and Councel of State supply the want of a Grand Inquest; and their Appointment is in stead of a Bill of Enditement found and presented. *As Assuredly as the High Inquisition was erected in Spain by Ferdinando and Isabella to extirpate the Mahometan Moors: And the said Councel of Blood in the Lowe Countreys, by the Duke D' Alva to weed out the Lutherans, Calvinists and Anabaptists. So is this High Court set-up in England, to root out the Royallists, Presbyterians and Levellers; and generally all that will not wholly concur with our Independents in Practice and Opinions.* As will manifestly appear when their work is done in *Scotland*, which will soon be effected: the more zealous Scots being now as ready to sell their Kingdom; as they were formerly to sell their King.

10. *Decemb.* 1650. A New Act passed, for establishing an High Court of Justice in *Norfolk, Suffolk, Huntington, Cambridge, Lincoln*, and the Isle of *Ely*, &c. And so by degrees this gangrene shall enlarge it self all the Kingdom over.

I. Conclude therefore upon the Reasons aforesaid; That because the Commissioners or Judges are not sworn to do Justice according to the Laws: and are parties pre-ingaged (as well as their Masters, and pay Masters, that named them) ignorant men, and of vild & base professions, uncapable of places of Judicature, Necessitous Persons, and some of them Scandalous, and the High Court it self hath neither Law, President, nor any

juſt Authority for conſtituting thereof or the Judges therein. And all proceedings before them are directly Contrary to *Magna Charta*, the Statute 25. *Edw.* III. chap. 2. The Petition of Right and all other known and Eſtabliſhed Laws, and the continual Practice of our Nations; and (in many points) contrary to the Law of God and the Dictates of Right Reaſon. *That theſe Commiſſioners are Incompetent Judges; Their Court an Extrajudicial Conventicle, tending to diſinherit, disfranchiſe and enſlave all the Freemen of the Nation; and all Proceedings before them are void, and coram non Judice.* See Col. *Andrews* 3. Anſwers, The ſaid High Court of Iuſtice to be a meer bloody Theater of Murder and Oppreſſion. It being againſt Common Reaſon, and all Laws divine and humane, That any man ſhould be Iudge in his own Cauſe. *Neminem poſſe in ſua cauſa Iudicem eſſe.* Is the Rule in Law. *But this Parliament and Councel of State know they cannot eſtabliſh and confirm their uſurped Tyranny, (The Kingdom of the Saints,) eate up the People with Taxes, and ſhare publike Lands, Offices, and Mony amongſt themſelves, enſlave the Nation to their Lawleſs wills and pleaſures, but by cutting off the moſt able and active men of all oppoſite parties by ſome ſuch expedient as this Arbitrary Lawleſs High Court is. The old Legal way by Iuries (being found by Iohn Lilbourns Trial) to be neither ſure enough nor ſpeedy enough to do their work. A Butcher-Rowe of Iudges being eaſier packed, then a Jury who may be challenged. So that it fareth with the People of* England, *as with a Traveller fallen into the hands of Thieves. Firſt, they take away his Purſe. And then, to ſecure themſelves, they take away his life. So they Robbe him by Providence, And then Murder him by Neceſſity. And (to bring in their third inſiſting Principle) they may al-*

alleage; They did all this upon Honest intentions; to enrich the Saints, and rob the Egyptians. With these 3. Principles they Iustifie all their Villanies. Which is an Invention so meerly their own, That the Devil must acknowledge: They have propagated his Kingdom of Sinne and Death more by their impudent Iustifications, then by their Turbulent Actions.

An Additional Postscript.

SInce the Conclusion of the Premises hath hapned, the Trial of that worthy Knight Sir *Iohn Stowell*, of the County of *Sommerset*:. Who having bin often before this Court, hath so well defended himself, and wiped off all Objections, and made such good use of the Articles of the Rendition of *Exceter*, that in the Opinion of all men, and in despite of their ensnaring Acts for New Treasons, he cannot be adjudged guilty of any Treason, Old or New, which was the Sum and Complement of the Charge against him. Wherefore the Court put off his Trial for a longer time, to hunt for New Crimes and Witnesses against him. At last came into the Court as a witness *Iohn Ashe*, notwithstanding he is a Party many wayes engaged against him. 1. *Ashe* is a Parliament-man; in which capacity Sir *Iohn Stowel* bore Arms for the King against him. 2. *Ashe* as a Parliament-man is one of the constitutors of this murderous Court and the Iudges thereof, and therefore their Creatures (who expect rewards from them) bear a more awful respect to his testimony, then a witnes ought to have from Iudges. 3. It is publickly known that *Ashe* hath

begged of the Houſe a great ſumme of mony out of the Compoſition for, or Confiſcation of Sir *Johns* Eſtate. And 4ly. It is known to many, That during Sir *Johns* many years Impriſonment *Aſhe* often labour'd with Sir *John* to ſell unto him for 4000. l. a Parcel of Land which coſt Sir *John* above 10000 l. promiſing him to paſſe his Compoſition at an eaſie rate, to procure his enlargement from Priſon, and ſend him home in peace and quiet if he granted his deſire. But although with all their malicious diligence, they cannot finde him guilty of High Treaſon, yet their Articles of Impeachment Charge him in general Tearms with Treaſon, Murder, Felony, and other High Crimes and Miſdemeanors; and amaſſe together ſuch a Sozites and an Accumulation of Offences, as if one fail another ſhall hit right to make him puniſhable in one kinde or other: ſuch an hailſhot charge cannot wholly miſſe, either they will have life, eſtate, or both; Contrary to the nature of all Enditements and Criminal Charges whatſoever; which ought to be particular, clear and certain (Lamb. page 487.) that the accuſed may know for what Crime he puts himſelf upon iſſue; But this Court (as High as it is) not being Conſtituted a Court of Record; the Priſoner, and thoſe that are concerned in him, can have no Record to reſort to either. 1. To demand a Writ of Errour, in Caſe of Erroneous Judgment. 2. To ground a plea of *Auterfois Acquite*, in caſe of New Queſtion for the ſame fact. 3ly, Or to demand an enlargement upon Acquital. Or 4ly, To demand a writ of conſpiracy, againſt ſuch as have combined to betray the life of an innocent man. Whereby it follows, That this prodigious Court hath power only to Condemn and Execute; not to Acquit and

and give Enlargement; Contrary to the Nature of all Courts of Judicature, and of Juſtice it ſelf: it is therefore a meer *Slaughter-houſe* to Commit Free-State Murders in, without, nay againſt Law and Juſtice: and not a Court of Judicature; to condemne the *Nocent*, and abſolve the *Innocent*. And the Iudges of this Court runne Parallel with their Father the Devill; who is ever the Miniſter of Gods wrath and fury, never of his Mercy.

The humble Answer of Coll. *Eusebius Andrews* Esquire, to the Proceedings against him before the Honourable, The high Court of Justice 1650.

THe said Respondent (with favour of this Honourable Court) reserving & praying to be allowed the benefit and liberty of making farther Answer, if it shall be adjudged necessary, offereth to this Honorable Court

That by the Stat. or Charter stiled *Magna Charta*, (which is the Fundamental Law, and ought to be the Standard of the Laws of *England*, Confirmed above 30. times, and yet unrepealed, it is in the 29. Chapter thereof granted and enacted,

1. *That no Freeman shall be taken or imprisoned, or be disseised of his Freehold or Liberties, or Free Customs, or be out-lawed or exiled, or any other ways destroyed,* Nor *we shall not pass upon him, but by a lawful Judgment of his Peers, or by the Law of the Land.*
2. *We shall sell to no man, nor deferr to any man Justice or Right.*

By the Stat. 42. Ed. III chap III. The Great Charter is commanded to be kept in all points: and it is enacted. *That if any Stat. be made to the contrary,* That *shall be holden for none.*

By the Act 26 March 1650. entituled, An Act for establishing, An High Court of Justice, *Power is given to this Court; To Try, Condemn, and cause execution of death to be done, upon the Freemen of England, according as the Major number of any 12. of the Members thereof shall judge to appertain to Justice.*

And

And therupon the Respondent doth humbly inferre, and affirme that *the Tenor of the said Act is diametrically oppoſite to, and inconſiſtent with the ſaid Great Charter.* And is therefore by the ſaid recited Stat. 42. Ed. III. to be holden for none.

Secondly, That it can with no more Reaſon, Equity or Juſtice, hold the reputation or value of a Law, (if the ſaid Stat. had not bin) then if (contrary to the 2d. Clauſe of the 29. chap of *Magna Charta*) it had bin alſo enacted, *That Iuſtice and Right ſhall be deferred to all Freemen, and ſould to all that will buy it.*

By the Petition of Right, 3. Car. upon premiſing: That contrary to the Great Charter, Trials and Executions had bin had and done againſt the Subjects, by Commiſſions Martial, &c. it was therby prayed, and by Commiſſion enacted. That:

1. *No Commiſſions of the like nature might be thenceforth iſſued,* &c.

2. *To prevent leaſt any of the Subjects ſhould be put to death, Contrary to the Laws and Franchiſes of the Land.*

The Respondent hereupon Humbly obſerveth; and affirmeth: *That this Court is (though under a different ſtile) in nature, and in the Proceedings therby directed, the ſame with a Commiſſion Martial.* The Freemen thereby being to be tried for life, and *adjudged by the Opinion of the Major Number of the Commiſſioners ſitting, as in Courts of Commiſſioners Martiall was practiſed;* and was agreeable to their conſtitution: *And conſequently againſt the Petition of Right:* in which he, and all the Freemen of England (if it be granted there be any ſuch) hath and have Right and Intereſt, & he humbly claimes his right accordingly.

By the Declarations of this Parliament, Dec. and Jan. 17. 1641. The benefit of the Laws, and the ordinary courſe of Juſtice are the Subjects Birthright.

By

By the Declaration, 12. July. 6.1.Octob. 1642. *The Prosecution of the Laws, and due administration of Iustice, are owned to be the justifying cause of the War, and the end of the Parliaments Affaires managed by their Swords and Counsels, and Gods curse is by them imprecated, in case they should ever decline those ends.*

By the Declaration 17. Aprill 1646. Promise was made not to interrupt the Course of Justice, in the ordinary Courts.

By the Ordinance or Votes of Non-addresses, Jan. 1648. It is assured, *That, though they lay aside the King, yet they will govern by the Laws, and not interrupt the course of Iustice, in the ordinary Courts thereof.**

And therfore this Respondent humbly averreth and affirmeth, That *the constitution of this Court, is a breach of the publique Faith of the Parliament exhibited and pledged in those Declarations and Votes to the Freemen of England.*

And upon the whole matter, the Respondent (saving as aforesaid) doth affirme for Law and claimeth as is Right. *That*:

1. This Court in defect of the validity of the said Act, by which it is constituted, hath no power to proceed against him, or to presse him to a further Answer.
2. That by vertue of *Magna Charta*, The Petition of Right, and the before recited Declarations, he ought not to be proceeded against in this Court, but by an ordinary Court of Iustice, and to be tried by his Peers.

* They forget the 2. Declarations 9. Febr. 17. March 1648.

And humbly prayeth: That this his present Answer and *Salvo* may be accepted and registred.

Eusebius Andrewes.

I The

The Second Answer of Col. *Eusebius Andrews* Esquire, To the Honorable, The High Court of Justice. 1650.

THe said Respondent (with the Favour of this Honorable Court) reserving and praying to be allowed the Benefit, and Liberty of making further Answer, if it shall be Necessary. In all humblenesse for the present Answer offereth to this Honourable Court.

That by the Letter and genuine sense of the Act, entituled An Act for establishing an High Court of Justice. *The said Court is not qualified to try a Freeman of* England, (such as the Respondent averreth himself to be) *for life in case of Treason.*

For that: 1. *The said Court is not constituted a Court of Record, neither hath Commission returnable into a Court of Record.*

So that: 1. *The State cannot upon the Record* (and but upon Record cannot at all) *have that account of their Freemen, which Kings were wont to have of their Subjects, and States exact else where at the hands of their Ministers of Justice.*

2. *The Freemen, and those who are or may be concerned in him, can have no Record to resort to, by which to preserve the Rights due to him and them respectively.* viz.

1. *A writ of Errour* in case of erronious judgment.
2. *A plea of Autrefoies acquit*, in case of new question for the same fact.
3. *An Enlargement* upon Acquitall.
4. *A Writ of Conspiracy*, not to be brought until Acquital, against those who have practised to betray the life of the Respondent.

1. *The*

1. *The Writ of Errour is due by Preſidents.*
Paſchæ 39. Ed. III. John of Gaunts Caſe Rot. Parliament. 4. Ed. III. Num. 13. Count de Arundells Caſe. Rot. Parliament 49. Ed. III. Num. 23. *Sr. John of Lees* Caſe
2. *Auterfois acquit* appears by:
Wetherell and *Darleis* Caſe. 4. Rep. 43. *Eliz.* *Vaux* his Caſe. 4. Rep. 33. *Eliz.*
3. *The Enlargement* appears by:
Stat. 14. *Hen.* IV. chap. 1. Diers Reports fol. 121. The year book of Ed. IV. 10. fol. 19.
4. *The writ of Conſpiracy*, by:
The Poulters Caſe. 9, Rep. fol. 55.

This Court is to determine at a day, without account of their proceedings, and have power to try, judge, and cauſe Execution: but not to acquit or give Enlargement. So that the nocent are therby puniſhable; the injured and betrayed not vindicable. Which are defects incompatible with a Court of Iuſtice, and inconſiſtent with Iuſtice it ſelf; and the honor of a Chriſtian Nation and Common wealth.

2. *The Members of this Court, are by the ſaid Act directed to be ſworn.*
1. *Not in conſpectu populi*; For the Freemans ſatisfaction.
2. *Not in words of Indifferency* and obliging in equality.
3. *But in words of manifeſt partiality*, viz.

You ſhall ſwear; That you ſhall well and truly, according to the beſt of your skill and knowledge, *execute the ſeverall powers given you by this Act.*
1. *If the Court be Triers and Iudges too, it is humbly offered by the reſpondent, that it is but reaſonable; that they ſhould be ſworn as triers; in the ſight of the Freeman who ſhall be upon his Triall.*
2. *And, that as Iuſtices of Oyer and Terminer* (They being authorized to hear and determine by the words of the Act. *They ſhould take an oath, ſuch as is uſual and equal, ſet down* E. III.

Viz. *You shall swear, that well and lawfull you shall serve our Lord the King, and his People in the Office of Iustice, &c. And that you deny to no man Common Right.*

3. Or that this Court (taking Notice of such high matters as Treason, upon the guilt wherof the Freemans life depends) should take an Oath (at least) as equall as a Iustice of the Peace. *Daltons Iust. of Peace, fol.* 13. the words are,

I A. B. *do swear that I will do equall Right*, &c. *according to my best wit, cunning and power, after the Laws and Customes of the Land, and the Statutes therof made*, &c.

4. If the Court will be Iudges and Triers too: (for they have power given them to conclude the Freemen, by the opinion of the major number of twelve, holding some resemblance (but with a signal difference) with the verdict of a Iury) it were but reasonable that they should take an Oath correspondent to that usually administred to Iury-men. The words are,

You shall *well and truly try, and true deliverance make betweene the Keepers of the Liberties of England, and the Prisoner at the Bar, according to your evidence.* So help you God, &c.

5. When this Court (as it is now constituted) hath condemned a Freeman, by applying their skill and knowledge to the power given them, whether justly or not: the Oath injoyned them by the Act 26. Marh, 1650. is not broken, literally; as to be exactable by man, though God will have a better account.

And therefore upon the whole matter premised: The Respondent (saving as before) averreth for Law and Reason: This Court by the words of the Act constituting it, is not qualified, (in respect of the objected defects) to passe upon him for life in case of Treason, And prayes this his 2: Answer may be received, with the *Salvo's*, and registred.

Eusebius Andrews.

The third Answer of Coll. *Eusebius Andrews* Esquire, to the Honorable, The High Court of Justice. 1650.

THe said Respondent (with favour of this Honourable Court) reserving and praying to be allowed the benefit and liberty of making further Answer, if it shall be necessary, in all humblenesse for present Answer offereth to this Honourable Court,

1. That it is his Right (if he admit this Court to be duly and legally established, and constituted as to their being a Court) to be tried by his Peers; men of his own condition and Neighbourhood.

2. *That it is within the power of this Court, by the Letter of the Act,* 26. March 1650. *Or (at least) not repugnant to the Act, to try him by such his Peers, &c.*

1. *That it is his Right to be tried only so:* appears by

Magna Charta, chap. 29.	25. Ed. 1. chap. 1. and 2.
25. Ed. 3. chap. 9.	25. Ed. 3. chap. 2. and 4.
28. Ed. 3. chap. 4.	37. Ed. 3. chap. 18.
42. Ed. 3. chap. 3.	

By all which this Right is maintainable; *And the Proceedings contrary thereunto will be held for none, and to be redressed as void and erroneous.*

So that if the Laws and Courts were not obstructed in the cases of some sort of Freemen of *England*, the whole Proceedings contrary to these Laws without a Jury of his Peers, were avoidable and reversible by Writ of Errour, as appears by the Presidents vouched in the Respondents second Answer.

3. That it is in the Courts power, To try the Freeman, & consequently the Respondent, by a Iury of his Equalls; The Court is humbly desired to consider the words of qualification.

1. *The Court is Authorised; To hear and determine: and so* (if at all Commissioners) *then Commissioners of Oyer and Terminer, and such Commissioners, in their natural constitution and practical execution, do proceed against Freemen according to Law by a Iury of their* Peers, and not otherwise.

2. *Authorised to proceed to Trial, condemnation and execution: But not restrained to the manner limitative:* As, *to Triall by the Opinion of the Court, as Triers* Nor *exclusive.* As, *to Triall per pares. But is left in the Manner, as in the Iudgment it self. To the Opinion of the major part of* 12. *and if they shall think fit to try by a Iury, it will be no offence against the Act, there being no* Prohibition *to the contrary.*

And though this Respondent insisteth upon his said Right, consisting with the Courts said power, and the more to induce the Court to grant him his said Right; *He humbly representeth the wrong done to himself, and in him to the Freemanry of England in the following particulars, against their just Rights depending upon such Trials to be allowed or denied.*

1. *Challenges to his Triers peremptory, or with cause of Challenge.*

2, *Seeing, hearing, and counter-questioning the witnesses for* clearing of the Evidence: in *matter of Fact* and *Circumstance*

3. *The being convicted or acquitted by a full and fully consented verdict.*

To all which benefits as his undoubted Right, and the Right of all the Freemen of *England*, the Respondent maketh claim by these Reasons, Laws and Presidents following.

1. The

1. *The benefit of Challenges by the learning of Stanford* in his Pleas of the Crown, Title challenge fol. 150. To challenge 35. without Reason shewed; and with Reason shewn, without Number adjudged 32. Hen. VI. in *Poinings* case, abriged by Fitzherb. Tit. Challenge, fol. 26. allowed in Hillary 1. Jac. Sir *Walter Rawleigh* and *Brooks*.

2. *To the hearing and questioning the value and weight of the witnesses.* The Laws are plain in *Stanfords* pleas of the Crown fol. 163, 164. Stat. 1. and 2. of Phil and Mary, Chap. 10, 11. 1 Ed. VI. chap. 12. Cookes 3. Instit. pag. 12. upon the words in the St. 25. Ed. III. chap. 2. (Provablement atteint) *Because the punishment was heavy, the proof must be punctual, and not upon Presumptions, or Inferences, or Streins of wit, nor upon Arguments simili, or Minori ad Majus, &c.* But upon good and clear proofs, made good also by the St. 1. Ed. c. 6. 19. Ed. c. 1.

3. *A verdict by Iury passeth from all, or not at all, in this way of proceeding by the Court immediatly: it passeth by way of concurrence (or voting) the great fault found with the Star-Chamber; and all Commissionary Courts, proceeding without presentment or Enditement.*

4. *A Verdict passeth from a Iury before discharged, upon their Affairs of business, or supplies of Nature; to prevent corruption by mony or power. In this way of Trial a man may be heard to day, and a Sentence given at leisure, when the power and will of those by whom the Freeman is prosecuted, be first known.* And from such a proceeding this Respondent can hope little equality; he being (to his knowledge) forejudged already by them.

And therefore (if at all this Honourable Court think fit to proceed to a Trial of this Respondent) he claims the benefit of Trial *per pares*: by *Evidence viva voce*. And rests on the Opinion of the Court; saving (as formerly) Liberty of farther Answer, if over-ruled.

And prayes that this his Answer and Salvos may be accepted and registred.

Eusebius Andrews.

WHereas mention hath bin made in several printed Books, that *John Fowke* Alderman, was one of those persons, that did actually sit as Judges upon the Trial of his Majesty, with the Councel and Attendants of the Court. And was in the number of the Judges at the Kings sentence of death. These are to give notice to all men, that the same is most false and scandalous, as will many wayes appear; And in particular, by the Certificate of *Henry Scobell* Clerk of the Parliament, in these words following, (*Viz.*)

IN a Book Ordered by the Parliament to be kept among the Records of the Parliament read in the House the 11. of *December* 1640. and Entituled, *A Journal of the Proceedings of the High Court of Justice, erected by Act of the Commons of England*, Entituled, *An Act of the Commons of England in Parliament Assembled, for Erecting of an High Court of Justice, for the trying and judging of* Charles Stewart, *King of* England; In which Books are set down the Names of the Commissioners, appearing each day in Court. Having diligently searched the same, the name of *John Fowke* Alderman of *London*, is not therein mentioned, as being present with the Commissioners at any meeting upon the said Trial, either publike or private.

March 28. 1660.

Henry Scobell Clerk of the Parliament.